TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 561.

THE UNITED STATES *EX REL.* JOHN TURNER, APPELLANT,

vs.

WILLIAM WILLIAMS, UNITED STATES COMMISSIONER OF IMMIGRATION FOR THE PORT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 28, 1904.

(19,212.)

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1 In the Circuit Court of the United States for the Southern District of New York.

Ex Parte JOHN TURNER. Petition for Writ of *Habeas Corpus* and Certiorari.

To the honorable judges of the United States circuit court for the southern district of New York:

The petition of John Turner respectfully shows to the court, first, that on October 23rd in the city of New York your relator was arrested by divers persons claiming to be acting by authority of the Government of the United States and was by said persons conveyed to the United States immigration station at Ellis island in the harbor of New York and is now there imprisoned by the commissioner of immigration of the port of New York.

Second. Your relator is so imprisoned by virtue of a warrant sworn out by the Secretary of the Department of Commerce and Labor, which warrant charges your relator with being an anarchist and being unlawfully within the United States in violation of section 2 and section 20 of the immigration laws of the United States, as amended by act of March 3rd, 1903.

Third. Upon information and belief that a special board of inquiry consisting of Charles Semsey, Capt. Weldon, supervising inspector, and L. C. Steward all of whom are executive officers of the United States, has inquired into your relator's case and decided that your relator is an anarchist and is in the United States in violation of law within the meaning of the act of March 3, 1903.

2 Fourth. Your relator denies that he is an anarchist within the meaning of the immigration laws of the United States, and states to the court that about six years ago he took out his first papers of application for citizenship in this country, and that he has at no times been engaged as a propagandist of doctrines inciting to or advising violent overthrow of government, but for about six years last past he has been the paid organizer of the retail clerks of Great Britain and his business in this country is solely to promote the interests of organized labor, and that he has at all times conducted himself as a peaceful and law abiding citizen.

By reason of all of which facts your relator says that this imprisonment is illegal, in that he is being deprived of his liberty without due process of law and is being denied equal protection of the laws, contrary to the Constitution and laws of the United States.

Wherefore the relator prays that a writ be issued to William Williams, commissioner of immigration of the port of New York, directing him to have the body of your relator before the circuit court of the United States for the southern district of New York at a stated term thereof to be held in room 124 Federal building, on

Tuesday the 27th day of October, 1903, at two o'clock in the afternoon and that the lawfulness of your relator's imprisonment by the said commissioner be then and there inquired into.

Your relator further prays that a writ of certiorari be issued to William Williams, commissioner of immigration of the port of New York, Capt. Weldon, supervising inspector of immigra-
3 tion, commanding them to certify fully and at large to the said court at the same time and place of the record of the said board of inquiry by which your relator was adjudged to be an anarchist and in the United States in violation of the immigration laws.

JOHN TURNER.

Sworn to before me this 26th day of Oct. 1903.

LAWRENCE P. LEE,
[SEAL.] *Notary Public, N. Y. County.*

4 The President of the United States of America to William Williams, commissioner of immigration of the port of New York, and to all and every person and persons, officer and officers, having custody or control of the prisoner hereinafter named, Greeting:

Being informed that you or some of you have in your custody, one, John Turner, and being willing for certain reasons that the lawfulness of the said imprisonment be inquired into, we command that you have the body of John Turner before the circuit court of the United States for the southern district of New York in the second circuit at a stated term thereof to be held in room 124, Federal building on Wednesday the 28th day of October, 1903, at four o'clock in the afternoon what shall then and there be considered concerning the said John Turner, and have you then there this writ.

Witness the Honorable Melville Fuller, Chief Justice of the Supreme Court of the United States the 26th day of October, 1903.

[SEAL.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. H. LACOMBE,
U. S. Circuit Judge.

5 President of the United States of America to William Williams, commissioner of immigration of the port of New York; Capt. Weldon, supervising inspector, and —— ——, inspector:

We command that you certify fully and at large to the circuit court of the United States for the southern district of New York at a stated

A. Yes, sir. I want to say in reference to that paper that while Mr. Turner was turning the corner of 35th street, he rolled this paper up into a small pile and threw it in the street. It was picked up by Chief Flynn and handed to me.

13 Q. Are the pencil marks in Mr. Turner's handwriting?

A. I suppose they are.

Mr. TURNER: "I want to say, Commissioner, that they are."

(Attention is called to the fact that the lecture mentioned on Exhibit "C" to be held November 13, was on the subject of "The essentials of anarchism.")

Q. Have you some other papers that were found on Mr. Turner's person?

A. I think I gave you all I had. I also wish to say that I handed several papers to Mr. Govern, who was present.

Q. Were the papers in envelope marked "G" also found on Mr. Turner's person? Let Mr. Turner see them.

A. I readily recognize having taken all of these papers from Mr. Turner's person last night.

Q. Did you hear Mr. Turner state that he was an anarchist?

A. I did, sir. I submit a notation made at that particular part of his speech.

Q. Is paper marked "H" a memorandum in your own handwriting of a portion of the speech?

A. Yes, sir.

Q. I find the words "an anarchist"—did he use those words, speaking of himself?

A. Yes, sir.

(Exhibit "H" shown to Mr. Turner.)

Q. Did you find at the meeting, ready for distribution, a book entitled "Modern Science and Anarchism," Exhibit "I"?

A. I did not find that particular book.

(Mr. Govern found Exhibit "I" at the meeting.)

Mr. JOHN TURNER, having first duly affirmed that he would tell the whole truth, testifies as follows:

14 Q. You are an Englishman?

A. I am.

Q. Look at Exhibit "H" please. Do you admit its correctness?

A. Well, of course, one can't remember all of what one says—I should say that it is fairly correct.

Q. Did you state that you were an anarchist?

A. It is just possible that I did—it is just possible that I should make such a statement.

Q. As against the positive affirmation of these gentlemen here you would not undertake to deny it?

A. No, I would not. It is a very probable statement—a statement that I would make.

Q. Are you familiar with the immigration laws?

A. I can't say I am, Commissioner. I believe there have been many restrictions in the immigration laws of late. We have heard it, of course, discussed in labor circles in England—of the greater stringency in the immigration laws. I may say that I do not consider myself an immigrant.

Q. I will correct that impression—the law applies to aliens, and not to immigrants alone.

Q. How long have you been in the United States?

A. Is it necessary that I should answer that, Commissioner?

Q. The statutes contemplate that aliens shall give all information to immigration officers?

A. Well, to-day is Saturday—ten days.

Q. And you admitted previously that you arrived via Canada?

A. No, I did not, Commissioner.

Q. You will deny that?

A. I neither affirm or deny it. I told you I did not come through New York. That is what I told you. I said I must decline to answer that question, if you remember.

15 Q. You have heard what has been testified to by Inspector McKee and Inspector Weldon concerning last night's meeting?

A. Yes.

Q. Do you admit the substantial accuracy of what has been said?

A. Yes, I think that is about correct. I would like to make a statement in regard to these exhibits—a mistake has been made. I saw these (referring to Exhibits F and D) in the hands of the officers last. Those are the only ones. I think they have probably got in my mistake. I have never seen those before. I think this is an error—I would not say that this book was in my pocket—of course it is the same date—I saw that number before.

Mr. WELDON: I want to say positively that I took that from Mr. Turner's overcoat pocket last night.

Mr. TURNER: Of course it's only a little technicality; but I think that is the same number.

(Mr. WILLIAMS:)

Q. Did you intend remaining in the United States any length of time?

A. Probably for a few months. I hope to get through to see my brother who is in Colorado and to meet a number of friends here, and to do some business here.

Mr. WELDON: Mr. Chairman: It having been shown by the evidence here and also by the admissions made by the defendant John Turner, that he is an anarchist, and that he is here in violation of the act approved March 3, 1903, I move that he be excluded and

not be permitted to land in the United States, and that he be deported.

16 Inspector STEWARD: I second the motion.

The board decides by a unanimous vote that John Turner is an alien found in the United States in violation of law, and that he be deported.

True copy.

JOSEPHINE A. MacDONALD.

17 EXHIBIT "A."

Extracts from Speech Delivered by John Turner at Murray Hill Lyceum, New York City, on Friday Evening, October 23, 1903.

The United Trades Unions of England, in the formation of which I have played a simple part, now number two million men. * * * The assessments in those unions are heavy enough to support those out of work, and also to provide a pension for the superannuated and a death benefit, thus making it to the benefit of all workers to remain loyal to the unions which are ready at all times for a struggle with the employers. * * * The trades unions of other European countries have behind them many grand social ideals, but at present behind the English trades unions there are little indeed. The English workman is satisfied to whittle away, and of course if they keep on whittling they will get to the end of the stick. * * * This question of a general strike is forcing itself more and more upon us, and we are compelled to look the facts in the face. * * * The employers are organizing, and there will surely come a time when the organized employers and the workers will come to close grips. * * * I think it very likely that the employers in their desire to break up the unions will precipitate matters, and will eventually give an ultimatum to the workingmen to the effect that unless they abandon their unions they will lock them out and crush them. Now, Mr. Chairman, are the workers going to abandon their organizations at the dictation of the employers? I say quite frankly that the working people will never give up the organizations that they have built. * * * Workers sometimes get

18 hotheaded, but they are slow to act. If the workers had the audacity, and the courage, and the power of their employers, they would supplant them in 48 hours. * * * If the workers were all educated in the advanced way, it would be impossible for them to be imposed upon the way they are now. * * * All over the industrial world a new spirit has arisen. Both sides, the employers and the workers, have been organizing, and the big struggle between the two is bound to come. Just imagine what a universal tie-up would mean. What would it mean in New York city alone if this idea of solidarity is spread through the city. If no work was being done, if it were Sunday for a week or a fortnight,

life in New York would be impossible, and the workers, gaining in audacity, would refuse to recognize the authority of the employers, and eventually take to themselves the handling of the industries. * * * All over Europe they are preparing for a general strike, which will spread over the entire industrial world. Everywhere the employers are organizing, and to me, at any rate, *as an anarchist*, as one who feels that the people must emancipate themselves, I look forward to this struggle as an opportunity for the workers to assert the power that is really theirs. * * * The trades unions have been growing, and have now reached big proportions. The inevitable outcome is a struggle between the two, and the general strike offers to advanced people an opportunity to demonstrate their power, and to us, who belong to the advanced movement, an opportunity to help the workers to gain in audacity and courage, and thus determine as quickly as possible their emancipation.

True copy.

J. J. McKEE,
U. S. Immigrant Inspector.

19 EXHIBIT "B."

Mass Meeting.

JOHN TURNER,

Chief organizer of the National Shop Assistants' (Retail Clerks') Union of England and member of the executive committee of the London trade- council,

Will lecture in

Murray Hill lyceum,

160–164 E. 34th St., near 3rd avenue,

Friday, October 23rd, at 8 p. m.

Subject: "Trades unionism and the general strike."

Admission..... 10 cents

Those who remember Comrade John Turner from his tour in 1897 will surely be pleased to see him again, whilst those who have not yet heard him will find him a most agreeable personality and an able exponent of the cause of freedom.

It may also be interesting to all that Turner has recently refused to accept a candidacy to Parliament, because of his anarchistic principles.

NOTE.—On the reverse of this card, Exhibit B, is printed in German practically the same statements as above set forth.

20 EXHIBIT "C."

Attention!

JOHN TURNER,

Chief organizer of the National Shop Assistants' (Retail Clerks') Union of England, and member of the executive committee on the London trades council,

Will deliver a series of lectures on the following dates:

Tuesday, October 27, 8 p. m.—at New Irving hall, Broome St., bet. Norfolk and Suffolk Sts. Subject: The labor struggle.

Sunday, November 1, 3 p. m.—before the Brooklyn Philosophical Association. At Long Island business college, South Eighth street, Brooklyn. Subject: Socialism and politics.

Sunday, November 8, 8 p. m.—before the Women's Henry George Club. At 224 E. 62nd street, New York. Subject: The labor struggle.

Monday, November 9, 8 p. m.—at Bronx casino, 2994 Third avenue. Subject: The legal murder of 1887.

Wednesday, November 13, 8 p. m.—before the Manhattan Liberal Club 220 E. Fifteenth street. Subject: The essentials of anarchism.

Other lectures will follow.

NOTE.—The days of the week on this exhibit were written in pencil.

21 Exhibit D is an eight page newspaper entitled—

"Free Society."

"A periodical of anarchist thought, work and literature. *Vol. X. No. 42.* Chicago, Sunday, October 18, 1903."

At the head of the editorial column appears the following:

"Free Society, formerly the Firebrand."

"Anarchy—A social theory which regards the union of order " with the absence of all direct government of man by man as the " political ideal; absolute individual liberty.—Century Dictionary."

In this paper appear several articles on anarchists and anarchy and an announcement in the following terms:

"For New York.

" John Turner will lecture in Murray Hill lyceum, 160 E. Fourth " St., near Third Ave., Friday, Oct. 23, 8 p. m. Subject, "Trade " unionism and the general strike." Admission 10 cents."

22 EXHIBIT "E."

A great
mass meeting

Will be held at

Bronx Casino

2994–2998 Third Ave.

on

Monday, Nov. 9th, 8 p. m.

Speeches will be delivered by

JOHN TURNER in English

JOHN MOST, in German

and several other speakers.

Don't miss this opportunity to hear the truth expressed about the great Chicago tragedy on the eleventh of November, 1887.

NOTE.—On the reverse of this card, Exhibit E, is printed in German practically the same statements as above set forth.

23 Exhibit "F" is a printed pamphlet entitled "Down with the Anarchist," and underneath these words is printed "This is the war cry raised by President Roosevelt and echoed by the Congress of the United States. Now then hear the other side. Anarchists will take the floor. Listen." Then follows various quotations from the writings of John Most and from the writings of other authors on subjects relating to anarchy.

EXHIBIT "H."

From lecture of John Turner, delivered October 23, 1903, at Murray Hill lyceum.

"And to me at any rate, *as an anarchist*, as one who feels that the people must emancipate themselves, I look forward to this struggle as an opportunity for the workers to assert the power that is really theirs."

J. WELDON.

24 *Exhibit 1* is a pamphlet of some ninety-four pages entitled—

"Modern Science and Anarchism by Peter Kropotkin trans-
"lated from the Russian generally by David A. Modell."

Exhibit G consists of various papers of no particular importance, except a card announcing the fact that John Turner would lecture in the Murray Hill lyceum on October 23, subject, "Trade unionism and the general strike." On this card also appears the statement that

"It may be interesting to all that Turner has recently refused to
"accept a candidacy to Parliament because of his anarchistic prin-
"ciple-."

(Endorsed:) U. S. circuit court, southern district of New York.—In the matter of the detention of John Turner. Return to writs of *habeas corpus* and certiorari. Robert A. Paddock, counsel for commissioner of immigration, 49 Wall street, Manhattan, New York. U. S. circuit court southern district of New York Filed Nov. 7, 1903, John A. Shields, clerk.

25 United States Circuit Court, Southern District of New York.

THE UNITED STATES *ex Rel.* JOHN TURNER
vs.
WILLIAM WILLIAMS, U. S. Commissioner of Immigration for the Port of New York.

Application for Habeas Corpus to Discharge from Custody.

LACOMBE, *Circuit Judge:*

The immigration act of March 3, 1903 increased the number of classes of aliens, who were to be excluded from admission into the United States. Among these additional classes are found "polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials."

The board of special enquiry has examined into the facts and decided that Turner is an "anarchist;" that decision is not open to review here.

The contention of relator is that the exclusion act is unconstitutional. That objection has been raised in very many cases and in all of them has been overruled: indeed counsel concedes, for the purposes of this argument, that as to all the kinds of persons enumerated in the act except anarchists, it is within the constitutional power of Congress to exclude them. It is undoubtedly true

26 that in the case of persons who are insane, or afflicted with contagious disease, or of some particular race or nationality,

or who have been convicted of crime involving moral turpitude the differentiation is physical rather than mental. Nevertheless it is now perceived why the principles laid down in Ekiu's case 142 U. S. 657 and a long line of similar decisions do not apply equally to a person who is differentiated by the possession and advocacy of specified beliefs as to the conduct and regulation of society.

"It is an accepted maxim of international law, that every sov-reign nation has the power, as inherent in sov-reignty, and essential to self-preservation, to forbid the entrance of foreigners within the dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. * * * In the United States this power is vested in the National Government, to which the Constitution has committed the entire control of international relations, in peace as well as in war." Ekiu's case *supra*.

Undoubtedly the Constitution which committed this power to the National Government might have restricted its exercise in any way that seemed appropriate to the persons who framed that instrument and to the States which adopted it. But the difficulty with the relator's case is that he can turn to no such restriction which affects him.

His contention is that Congress is prohibited from excluding anarchists by the provisions of article I of the amendments to the Constitution, which reads: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise
27 thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." It is difficult to understand upon what theory the exclusion of an alien, who is an anarchist, can be held to be a prohibition of the free exercise of religion. As to abridgement of the freedom of speech, that clause deals with the speech of persons in the United States and has no bearing upon the question what persons shall be allowed to enter therein.

All the other questions raised upon this application have been decided in earlier cases and need not be discussed. It was intimated on the argument that in the event of an adverse decision the relator expected to take an appeal direct to the Supreme Court. Should this be done the present custody of the prisoner will not be disturbed pending such appeal.

The writ is dismissed.

(Endorsed:) Circuit court of the United States, southern district of New York.—The United States *ex rel.* John Turner, *vs.* William Williams, U. S. commissioner of immigration for the port of New York.—Opinion, Lacombe, C. J.—U. S. circuit court, southern district of New York, Filed Nov. 7, 1903, John A. Shields, clerk.

28 At a stated term of the United States circuit court for the southern district of New York held at the Post Office building in the borough of Manhattan, city of New York, on the 11th day of November, 1903.

Present: The Honorable E. Henry Lacombe, judge.

UNITED STATES *ex Rel.* JOHN TURNER
vs.
WILLIAM WILLIAMS, U. S. Commissioner of Immigration at the Port of New York.

A petition having heretofore been presented to me setting forth that the above-named John Turner was restrained of his liberty by William Williams, United States commissioner of immigration at the port of New York, and a writ of *habeas corpus* having thereupon been issued commanding said William Williams to produce said John Turner before this court; and the said William Williams having produced the said John Turner in obedience to said writ, and having filed a return to said writ verified the 27th day of October, 1903, setting forth the cause of the detention of said John Turner; and the said John Turner, the petitioner herein, appearing by his attorneys Pentecost & Campbell, having demurred to said return upon the ground that it is insufficient in law upon the face thereof; and the matter coming on to be heard the 28th day of October, 1903; now, on reading and filing the above-mentioned petition and return, and after hearing Hugh O. Pente-
29 cost of counsel for the petitioner in support of the demurrer, and Robert A. Paddock of counsel for William Williams, the United States commissioner of immigration, in opposition thereto; upon motion of Robert A. Paddock, attorney for said William Williams,

It is ordered that the said writ of *habeas corpus* be and the same hereby is dismissed, and the said John Turner is hereby remanded to the custody of the United States commissioner of immigration at the port of New York.

It is further ordered that should the petitioner appeal from this order to the Supreme Court, the custody of said John Turner shall not be disturbed pending the final disposition of said appeal.

E. HENRY LACOMBE, *U. S. C. J.*

(Endorsed:) United States circuit court, southern district of New York.—United States *ex rel.* John Turner, *vs.* William Williams, U. S. commissioner of immigration at the port of New York.—Order dismissing writ.—Service of a copy of the within notice and proposed order is hereby admitted this 9th day of Nov. 1903.—Pentecost & Campbell, att'ys for petitioner.—Robert A. Paddock, counsel for commissioner of immigration, 49 Wall street, New York.—U. S. circuit court, southern district of New York, Filed Nov. 11, 1903, John A. Shields, clerk.

30 United States Circuit Court, Southern District of New York.

UNITED STATES *ex Rel.* JOHN TURNER
against
WILLIAM WILLIAMS, Commissioner of Immigration for the Port of New York.

In the matter of the petition of John Turner for a writ of *habeas corpus*.

SIR: Please to take notice that the relator herein, John Turner, herein appeals to the United States Supreme Court from the final order made herein, on the 11th day of November, 1903, dismissing the writ of *habeas corpus* herein, and remanding the relator herein to the custody of the commissioner of immigration for the port of New York.

Dated this 11th day of November, 1903.

PENTECOST & CAMPBELL,
Attorneys for John Turner, 346 *Broadway*,
Manhattan Borough, New York City.

To the honorable judges of the United States circuit court, for the southern district of New York.

To the clerk of the United States circuit court for the southern district of New York, N. Y. city; and

To William Williams, commissioner of immigration for the port of New York, N. Y. city.

31 (Endorsed:) United States circuit court, southern dist. of N. Y.—U. S. *ex rel.* John Turner, against William Williams, com. of immigration.—Notice of appeal, Pentecost & Campbell, attorneys for John Turner, 346 Broadway, New York city.—U. S. circuit court, southern district of New York, Filed Nov. 11, 1903, John A. Shields, clerk.

32 United States Circuit Court, Southern District of New York.

UNITED STATES *ex Rel.* JOHN TURNER
against
WILLIAM WILLIAMS, Commissioner of Immigration for the Port of New York.

In the matter of the petition of John Turner for a writ of *habeas corpus*.

The petition of the above named petitioner for an order allowing an appeal to the Supreme Court of the United States from the final order hereinbefore entered in this case.

John Turner, the petitioner and appellant above named, feeling himself aggrieved by the final order heretobefore made and entered by this court in this case on the 11th day of November, 1903, whereby the writs of *habeas corpus* and *certiorari*, directed to William Williams, commissioner of immigration of the port of New York, requiring said Williams to bring and have your petitioner before this court, together with the true cause of the detention of your petitioner, be and the same was thereby dismissed, now comes, by Pentecost & Campbell, his solicitors and counsel, and petition- this court for an order allowing him, said petitioner, to prosecute an appeal from said final order to the Supreme Court of the United States under
33 and according to the laws of the United States in that behalf made. Your petitioner is advised by counsel that there are grave doubts as to whether the dismissal of said writs have not infringed the constitutional rights of your petitioner, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court for their determination.

Your petitioner will ever pray.

PENTECOST & CAMPBELL,
Attorneys for Petitioner, 346 *Broadway*,
Manhattan Borough, New York City.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss.:*

John Turner, being duly sworn says that he is the petitioner above named; that the foregoing petition is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

JOHN TURNER.

Sworn to before me this 11th day of November, 1903.

LAWRENCE P. LEE,
[SEAL.] *Notary Public, N. Y. Co.*

The foregoing petition on appeal is granted, and claim of appeal therein made is allowed. Appeal bond fixed at $250.

E. HENRY LACOMBE, *U. S. C. J.*

34 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Lawrence Divizio being duly sworn says that he resides at 2044 First avenue, New York city, and that he is twenty-one years of age and upwards; that on the 27th day of November, 1903, he served copies of the petition of appeal and citation hereto annexed upon William Williams the defendant named in this action by leaving copies of the said petition and citation in the executive office of the immigrant station at Ellis island with the person in charge of said office, at the same time showing that person the original petition and citation, and having been informed by the said person in charge that Commissioner Williams was not at Ellis island.

LAWRENCE DIVIZIO.

Sworn to before me this 11th day of December, 1903.

GIRARD S. WITTSON,
Notary Public, N. Y. Co.

35 United States Circuit Court for the Southern District of New York.

THE UNITED STATES *ex Rel.* JOHN TURNER
against
WILLIAM WILLIAMS, United States Commissioner of Immigration for the Port of New York.

And now comes the relator, John Turner, by his attorneys Pentecost & Campbell, and makes and files the following assignments of errors.

First. The court erred in deciding that the decision of the board of special inquiry to the effect that the relator is an "anarchist" and "a person who disbelieves in or who is opposed to all organized government," within the meaning of the act of March 3, 1903, entitled "An act to regulate the immigration of aliens into the United States," is not open to review in this proceeding.

Second. The court erred in deciding that there is no restriction in the Constitution of the United States upon the power of Congress to regulate immigration which affects the relator.

Third. The court erred in deciding that the guarantee of freedom of speech contained in article one of the amendments to the Constitution, "deals with the freedom of speech of persons in the United States and has no bearing on the question what person shall be allowed to enter therein."

36 Fourth. The court erred in deciding that the relator is not a person in the United States and that he is not entitled to the benefit of this constitutional guarantee.

Fifth. The court erred in deciding that the act of March 3, 1903, entitled "An act to regulate the immigration of aliens into the United States," in the provisions thereof, providing for the exclusion of "anarchists" in section two thereof, and providing for the exclusion of "a person who disbelieves in or who is opposed to all organized government" in section 38 thereof is constitutional.

Sixth. The court erred in dismissing the writ of *habeas corpus* herein on all of the above grounds.

By reason whereof the relator John Turner prays that the order and judgment dismissing the writ of *habeas corpus* and remanding him to the custody of William Williams, United States commissioner of immigration for the port of New York be reviewed and that he be discharged from custody.

PENTECOST & CAMPBELL,
Attorneys for Relator, 346 Broadway,
Manhattan Borough, New York City.

37 Circuit Court of the United States of America for the Southern District, in the Second Circuit.

UNITED STATES *ex Rel.* JOHN TURNER *vs.* WILLIAM WILLIAMS, United States Commissioner of Immigration for the Port of New York.	Bond for Costs on Appeal.

Know all men by these presents, that we, John Turner, the relator herein, principal, and David Rousseau, residing at 310 Mott avenue, borough of Bronx, New York city, are held and firmly bound unto the above named William Williams, United States commissioner of immigration for the port of New York, in the sum of two hundred and fifty dollars ($250.), to be paid to the said William Williams for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated the 13th day of November, 1903.

Whereas, the above named John Turner, has prosecuted a writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled proceeding, by the judge of the cir-

cuit court of the United States for the southern district of New York;

Now, therefore, the condition of this obligation is such, that if the above named John Turner shall prosecute his writ of error to effect and answer all damages in court and if he fail to make his
38 plea good then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN TURNER, *Principal.*
DAVID ROUSSEAU, *Surety.*

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

On this 13th day of November, 1903, before me personally appeared David Rousseau, to me personally known and known to me to be the individual of that name mentioned and described in the foregoing instrument and he thereupon duly acknowledged to me that he executed the same.

JACOB SGANGA,
Notary Public, New York Co., No. 70.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

David Rousseau being duly sworn says that he is the person named as surety in the foregoing instrument and that he is worth the sum of five hundred dollars over and above all *the* just debts and liabili*ty.*

DAVID ROUSSEAU.

Sworn to before me this 13th day of November, 1903.

JACOB SGANGA,
Notary Public, New York Co.

39 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

On this 14th day of November, 1903, before me personally appeared John Turner, to me personally known and known to me to be the individual of that name mentioned and described in and who executed the foregoing instrument and he thereupon duly acknowledged to me that he executed the same.

LAWRENCE P. LEE.
[SEAL.] *Notary Public, N. Y. C.*

(Endorsed:) United States circuit court, for the southern district of N. Y.—The United States *ex rel.* John Turner, plaintiff *vs.* William Williams, U. S. commissioner of immigration for the port of New York, defendant. Bond for costs on appeal. Approved as to form and also as to sufficiency of sureties, with reservation, however to the defendant of the right at any time to examine the surety under oath, touching his assets, liabilities and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court, southern district of New York. Filed Dec. 1, 1903. John A. Shields, clerk.

40 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To William Williams, United States commissioner of immigration for the port of New York, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court to be holden in the city of Washington, District of Columbia, on the 2nd day of December, 1903, pursuant to a writ of error and petition of appeal filed in the clerk's office of the circuit court of the United States, for the southern district of New York, in the second circuit, wherein The United States of America *ex rel.* John Turner is complainant and William Williams, United States commissioner of immigration for the port of New York, is defendant, and you are required to show cause if any there be, why the judgment in said petition of appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named this 11th day of November, in the year of our Lord one thousand nine hundred and three, and of the Independence of these United States the one hundred and twenty-eighth year.

E. HENRY LACOMBE,
Judge of the Circuit Court of the United States
for the Southern District of New York,
in the Second Circuit.

41 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Lawrence Divizio being duly sworn says that he is twenty-one years of age and upwards, and resides at 2044 First avenue, New York city; that on the 27th day of November he served a copy of the citation hereto annexed upon the defendant herein by leaving a copy of the citation with the chief clerk of the executive offices

of the United States immigrant station at Ellis island at the same time showing him the original citation.

LAWRENCE DIVIZIO.

Sworn to before me this 28th day of November, 1903.

JACOB SGANGA,

[SEAL.] *Notary Public, New York Co., No. 70.*

(Endorsed:) United States circuit court, southern district of New York.—United States *ex rel.* John Turner, plaintiff, against William Williams, U. S. comm'r of immigration, defendant.—Petition of appeal, assignments of error and citation.—Pentecost & Campbell, attorneys for relator, 346 Broadway, New York city.—U. S. circuit court, southern district of New York, Filed Dec. 1, 1903, John A. Shields, clerk.

42 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled United States of America *ex rel.* John Turner complainant, appellant against William Williams, U. S. commissioner of immigration for the port of New York defendant, appellee as the same remain of record and on file in my office.

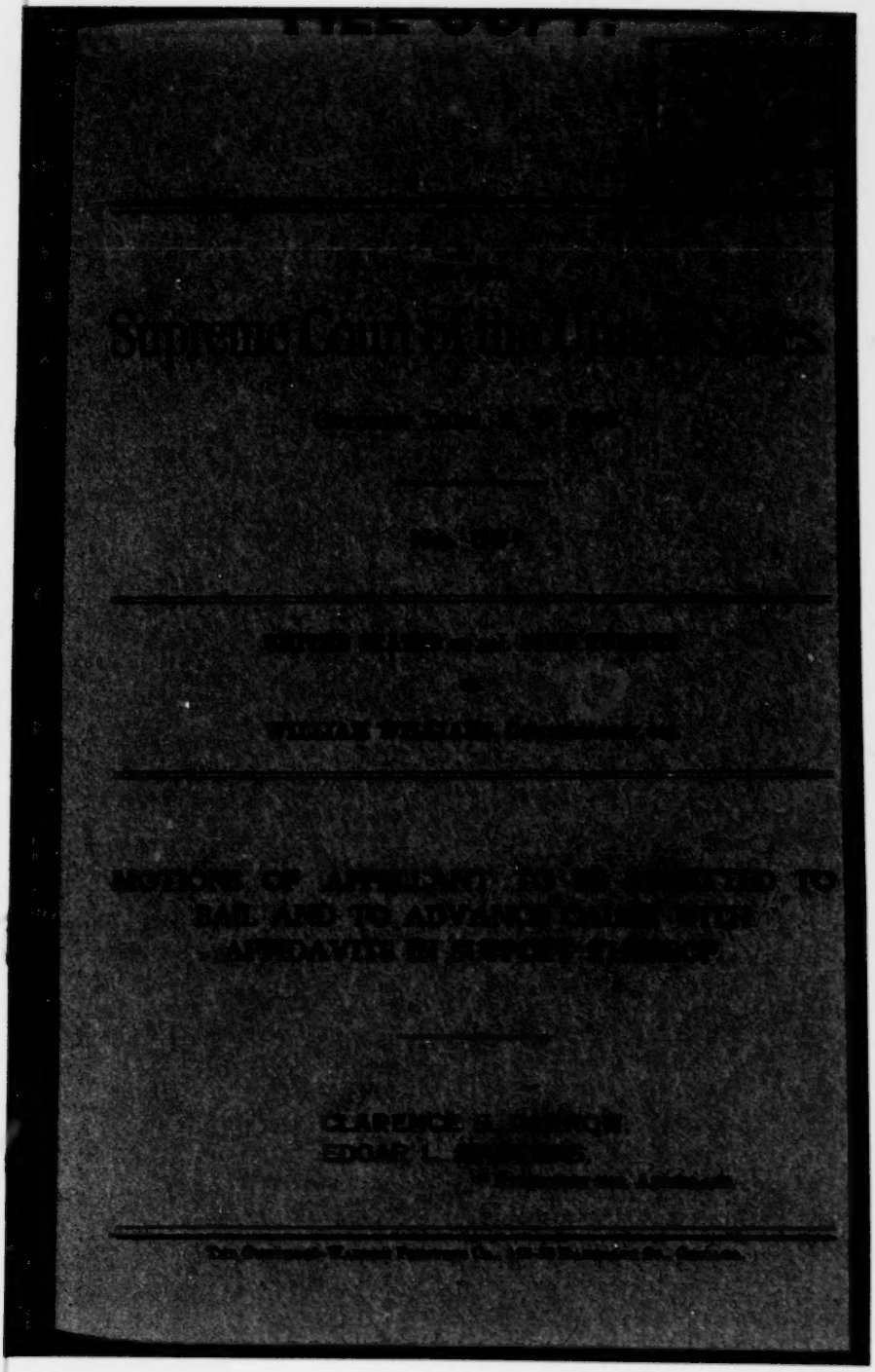
In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 31st day of December, in the year of our Lord one thousand nine hundred and three, and of the Independence of the said United States the one hundred and twenty-eighth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. United States *ex rel.* John Turner appellant *vs.* William Williams, U. S. comm'r immigration port of New York appellee Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: File No. 19,212. S. New York C. C. U. S. Term No. 561. The United States *ex rel.* John Turner, appellant, *vs.* William Williams, United States commissioner of immigration for the port of New York. Filed January 22d, 1904. File No. 19,212.



33122

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

UNITED STATES ex rel. JOHN TURNER *vs.* WILLIAM WILLIAMS, Commissioner, etc.	No. 561.

MOTION OF APPELLANT TO BE ADMITTED TO BAIL.

Comes now the appellant by his counsel, Clarence S. Darrow and Edgar L. Masters, and moves the court for an order enlarging the said John Turner, appellant, from the custody of the said William Williams, pending the disposition of this cause in this court, upon the said appellant giving bail upon such terms and conditions and in such amount as this court shall deem appropriate to the case. And in support of this motion the appellant presents the annexed affidavits and asks consideration thereof and of the record and briefs filed herein in this behalf.

CLARENCE S. DARROW,
EDGAR L. MASTERS,
Attorneys for Appellant.

33123

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

UNITED STATES ex rel JOHN TURNER	
vs.	No. 561.
WILLIAM WILLIAMS, Commissioner, etc.	

MOTION OF APPELLANT TO ADVANCE CAUSE.

Comes now the appellant by his counsel, Clarence S. Darrow and Edgar L. Masters, and moves the court for an order advancing this cause upon the docket of this court for hearing. And in support of this motion the appellant presents the annexed affidavits and asks consideration thereof and of the record and briefs filed herein in this behalf.

CLARENCE S. DARROW,
EDGAR L. MASTERS,
Attorneys for Appellant.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1904.

United States *ex rel.* John Turner
against
William Williams, Commissioner of Immigration.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK. } ss.

Bolton Hall, being duly sworn, says that he is a citizen of the United States, of the age of over 40 years, and has resided in this country since childhood; that he is an attorney and counselor of law in the City and State of New York, and that for many years he has known of the work and character of the above named John Turner; that said work has been in the organizing of retail clerks into unions, and in other matters concerning the well being of the middle and laboring classes.

That said Turner has been a constant writer and lecturer; and that the deponent is familiar with the reports of said lectures, and that they are calculated to promote social peace and friendly relations between classes of society; that the anarchy advocated by John Turner is described in the Century Dictionary as follows: "2. A social theory which regards the union of order with the absence of all direct government of man by man as the political ideal; absolute individual liberty." That Turner's conversation, speeches

and writings are always consistent with this doctrine of Christian freedom.

That the said Turner is a married man and has three small children, whom he supports by the proceeds of his literary and clerical toil, and that as husband, father and citizen of his country his life is ideal.

That the said Turner has never been arrested, indicted or otherwise come in conflict with the authorities, either in England or in any other European country where he has traveled in pursuance of his work in the organization of labor. He visited the United States before in 1896 and spoke to large audiences of influential people and without bringing any odium upon those who were sponsors of his appearance.

I offer myself as surety for any bond that the court may require in case the court should admit him to bail, and can offer real estate in justification of the same in excess of the value of $5,000.

BOLTON HALL.

Sworn to before me this 3d day of February, 1904.

FULTON MCMAHON,

Notary Public New York County.

UNITED STATES
OF AMERICA.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1904.

United States *ex rel.* John Turner
vs.
William Williams, Commissioner of Immigration.
No. 561.

Louis F. Post, being first duly sworn, deposes and says: That he is a resident of the City of Chicago, in the State of Illinois, and is a citizen of the state; that he is the editor of a weekly editorial publication known as the "Public," which is published in the said City of Chicago, and has been the editor and proprietor of such publication for several years last past.

Affiant further says that about seven years ago he met and became acquainted with the said John Turner at the office of the "Citizen," a labor newspaper published in the City of Cleveland, in the State of Ohio; and that afterwards the said John Turner took dinner at the home of this affiant. That after dinner on the said occasion this affiant had a long talk with the said John Turner, which related principally to labor conditions in Great Britain.

This affiant further says that the said John Turner on said occasion manifested and expressed the most peaceable theories and principles concerning government and labor conditions, and that the said John Turner impressed this affiant by his conduct, appearance and language on said occasion as a

gentleman of very high character. On said occasion the said John Turner told this affiant that he was not a voter in Great Britain, although under British law he had a right to vote; that his reason for not voting was that he objected to participating in the aggressions of governments.

And further this affiant saith not.

LOUIS F. POST.

Subscribed and sworn to before me this 8th day of February, A. D. 1904.

WILEY W. MILLS,
Notary Public.

[SEAL]

UNITED STATES OF AMERICA } ss.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1904.

United States *ex rel.* John Turner
vs.
William Williams, Commissioner of Immigration. } No. 561.

Clarence S. Darrow, being first duly sworn, deposes and says: That he is a resident of Chicago, and a citizen of the State of Illinois; that he knows of the said John Turner by reputation as being connected with the labor movement in Great Britain, and that the reputation of said John Turner is that of a peaceable and upright man.

This affiant further says that he can schedule more than five thousand dollars ($5,000) in justification of any bond which the court may require to be signed in this cause in case the said John Turner is admitted to bail by order of this court, and this affiant hereby tenders himself as surety upon any bond required by the court in this cause.

CLARENCE S. DARROW.

Subscribed and sworn to before me this 8th day of February, A. D. 1904.

ROBERTA LEE TERRY,
Notary Public.

[SEAL]

UNITED STATES OF AMERICA. } ss.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1904.

United States *ex rel.* John Turner
against
William Williams, Commissioner of Immigration.

STATE OF NEW YORK, CITY AND COUNTY OF NEW YORK. } ss.

John DeWitt Warner, being duly sworn, deposes and says that he is a native-born citizen of the United States and resides in the City of New York, and has followed the proceedings in the case of John Turner, a citizen of England, solely because of the importance to the rights of every citizen of the questions of law involved therein.

That deponent was a member of the Congress of the United States when in 1894 a proposed anti-anarchist bill was introduced into the body but failed of passage. That deponent is familiar with the Act of Congress of March 3, 1903, under which Turner was arrested and is being held for deportation solely because of his opinions.

That these opinions so far as deponent has been able to ascertain from the records in the case and the general reputation of Turner in labor circles and by other information are in substance identical with those held by the well known scientists Prince Peter Kropotkin and Elisee Reclus, and that these men and others, including Count Leo Tolstoi,

would, if they attempted to enter the United States, be liable to the same treatment as accorded to Turner, and further that anyone inviting them would be liable to fine and imprisonment.

That deponent is familiar with the procedure known in Russia as "administrative process," and historically with the "*lettres de cachet,*" and that much of the procedure contemplated by this law under which Turner is detained is more arbitrary than the former and apparently founded upon the more irresponsible practice of the latter.

That deponent is informed and believes that the case of John Turner is the first in which the federal authority has attempted to interfere with political opinions for over one hundred years.

That deponent is familiar by report of reputable persons with the conditions under which said Turner is kept, and that said Turner is imprisoned and even denied private consultation with counsel, and that as the act in question provides no penalty of imprisonment for the alien therefore Turner is kept in solitary confinement only because he has exercised the right of appeal; and deponent believes that a continuance of said conditions would not only work hardship to said Turner and his family, but amount to a virtual denial of justice.

JOHN DEWITT WARNER.

Sworn to before me this 5th day of February, 1904.

S. A. STORY,
Notary Public, Westchester Co.
Cert. filed in N. Y. Co.

UNITED STATES
OF AMERICA.

IN THE SUPREME COURT OF THE UNITED STATES. . .

October Term, 1904.

United States *ex rel.* John Turner
against
William Williams, Commissioner of Immigration.

Arthur C. Pleydell, being duly sworn, deposes and says that he is a native born citizen of the United States, over 30 years of age, and having been engaged in economic study and writing, has heard and read of the work and opinions of John Turner, a citizen of England, and labor organizer, and in the year 1896 heard Turner debate in Philadelphia on behalf of anarchist-communism; that by this doctrine affiant understands Turner to desire a state of society in which there shall be peace and order without the employment of repression, and while not believing the theories expounded by said Turner to be economically practicable or calculated if put in operation to bring about the results he predicts, affiant believes from knowledge of his career that in advocating these theories said Turner sincerely desires the elevation of mankind and labors for the same without expecting any personal advantage or gain except what might come to him in common with others as a result of improved social conditions.

That affiant became interested in the case of John Turner because of the arbitrary manner of his arrest, being in-

formed by persons who were present that the speech of said Turner was entirely in conformity with the peace and laws of the State of New York; that affiant is informed and believes that the said Turner, who is detained at Ellis Island, in New York Bay, is allowed only 30 cents a day for food, which must be expended at a restaurant located on said island, and that this sum will buy only two cups of coffee, one bowl of soup and ten slices of bread a day, or something similar; and this affiant has therefore collected money and delivered the same to Turner so that he could buy a sufficient amount of food; that said Turner is and has been for more than three months confined in a steel cage about nine by seven feet in floor area, located in the basement of a building, which cage is located more than fifteen feet from any window; and that he is informed and believes that said Turner is guarded constantly and is only allowed a limited amount of exercise daily in the custody of guards, notwithstanding the fact that said Turner so far from contemplating escape has insisted upon staying in the United States in order that the constitutionality of the Act of Congress under which he is detained and threatened with deportation may be authoritatively passed upon by the Supreme Court.

That affiant is informed and believes that the general detention quarters on said Ellis Island by reason of the large number of people usually therein are equally unsuited to a protracted stay; and therefore that either a continuance of confinement in his present quarters or a removal to the general quarters would work hardship to the physical health and mental repose of said Turner, besides preventing him from earning a living for himself and family and rendering

it necessary that they should be supported by the generosity of strangers.

That affiant believes from the general reputation of said Turner that he would not attempt to depart from said island unlawfully or in any other manner intentionally violate any obligation that he undertook or seek to evade the proper determination of his case.

That affiant has received letters from officials of labor unions in England commending the work of said Turner and protesting against the treatment accorded him, and one from the secretary of the National Amalgamated Union of Shop Assistants, Warehousemen and Clerks of Great Britain, stating that Turner had been sent by that organization as one of its delegates to an international conference held in Brussels, Belgium; and that the purport of these letteers is that, however they may disagree with his opinions as to the proper ultimate organization of society, Turner is regarded by his fellow-unionists as a useful and worthy citizen.

That at a public meeting held in New York December 3, 1903, many well known and respected citizens of New York acted as vice-presidents, among others Felix Adler, Wm. H. Baldwin, Jr., Ernest H. Crosby, Horace E. Deming, Henry George, Jr., Rev. Thomas C. Hall, Franklin H. Giddings, Wm. Jay Schiefflin, Carl Schurz, Chas. B. Spahr, Oswald G. Villard, John DeWitt Warner, Richard W. G. Welling, Horace White, and Rev. Leighton Williams; that at this meeting resolutions were adopted protesting against the law which excludes aliens solely because of their opinions, and also against the treatment accorded to John Turner at Ellis Island; and that these or similar resolutions of protest have been passed by the Central Fed-

erated Union of New York, the Brooklyn Federation of Labor, and many other societies and organizations, all of which shows that there are many citizens who believe that Turner should have some form of relief from his present confinement.

That affiant's only interest in this case is that, 1, being interested as a citizen in maintaining the institutions of the United States he believes this law and the manner of Turner's arrest and detention to be contrary to the spirit of these institutions; 2, that he is desirous of having the constitutionality of the law in question passed upon by this court; 3, that he believes Turner to be actuated by a desire for the improvement of social conditions; 4, that as if the law is held to be unconstitutional Turner is entirely innocent of any offense and in that case will have suffered imprisonment without being guilty of any offense whatever; and affiant therefore believes that said Turner should not be exposed to indignities and hardships.

ARTHUR C. PLEYDELL.

Sworn to before me this 4th day of February, 1904.

EDWARD WILLIAMS,
Notary Public, New York Co.

STATE OF COLORADO.
CITY AND COUNTY OF DENVER. } ss.

Max Morris, being first duly sworn, on oath deposes and says:

That he is a citizen of the United States and of the State of Colorado; and,

That he resides in Denver, in said state.

That for the last nine (9) years he has been the secretary-treasurer of the Retail Clerks' International Protective Association, which embraces nearly all the clerks' organizations in the United States and Canada.

That during that time he has had abundant opportunity for observing the work done by John Turner, of London, England.

That John Turner is the head and general organizer of the Shop Assistants of England and has been for a number of years.

That he has the full confidence of the members of that organization, and fills the highest office therein with great credit.

And further deponent saith not.

MAX MORRIS.

Subscribed and sworn to before me this 8th day of February, 1904.

M. H. SAMMIS,
Notary Public.

My commission expires April 1, 1907.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1904.

United States *ex rel.* John Turner
against
William Williams, Commissioner of Immigration.

CITY AND COUNTY OF NEW YORK. } ss.
STATE OF NEW YORK, }

John Turner, being duly sworn, deposes and says that he resides in London, England, and that he is a subject of Great Britain; that he will be 40 years of age in August, 1904; that he is married and has three children aged from 6 to 14 years; that his wife and children are now residing in London, England, and have no means of livelihood except through his efforts, and that his income and source of livelihood, and that of his wife and children, have been cut off since his confinement at the government immigration building located on Ellis Island, in the Harbor of New York, United States of America.

This affiant further says that he was born and raised in England and received a common school education, and since leaving school has devoted his spare time after working hours to the study of political and economic questions; that for twenty years he was engaged in the grocery business in and near London, England; that about five years ago he became an organizer of retail clerks into labor unions, and from

that time until obtaining leave of absence in October, 1903, was acting in that capacity for and in behalf of the National Amalgamated Union of Shop Assistants, Warehousemen and Clerks of Great Britain, the headquarters thereof located at 122 Gower street, London, England; and that in five years the membership of said union has trebled and its annual revenue increased from $6,500 to $100,000; that as organizer he has traveled through France, Belgium and the United Kingdom of Great Britain and Ireland, organizing labor unions and as labor delegate, and delivering lectures on political and economic subjects, and that his right to enter and pass through the said countries and deliver lectures has never been questioned by the authorities of any of the said countries.

That he has on different occasions and repeatedly lectured in London and other parts of England on the subject of "Essentials of Anarchism," and other subjects, and has delivered the same lectures in England which he contemplated delivering in the United States when arrested and ordered deported as shown by the record in this cause and as hereinafter set forth. That in 1896 he came to the United States of America and in seven months delivered more than one hundred lectures in divers cities and states on political and economic subjects without interference or question on the part of the authorities of any of the said cities and states or otherwise. That on coming to the United States in the month of October, 1903, this affiant was engaged to deliver lectures in the cities of Philadelphia, Boston, Chicago, St. Louis and New York, on trade, labor, political and social questions. This affiant further states that he came to the United States for said purposes and also for the purpose of writing articles relative to the conditions

of the grocery trade in the United States for publication in a trade paper called "Grocery," published in London, England, to which he is a regular contributor. That three brothers of this affiant are residing in the United States, two in the city of Chicago, and one, Albert Turner, who resides at Silverton, Colorado, is a naturalized citizen of the United States, and has resided in the United States twenty years.

That to deliver lectures as aforesaid and similarly to his lecture tour of 1896, to write articles as aforesaid, and others in relation to trade and labor which might seem likely to be suitable for publication in newspapers or periodicals of this country or of Great Britain, to see and visit his brothers and friends who reside in various cities; to make inquiries as to price and freight of manufactured articles with a view to doing business or securing agencies for a business friend in England, were the sole objects of his visits to the United States in October, 1903.

That at the time of his arrest at the instance of the Secretary of the Department of Commerce and Labor and the order of deportation which followed that arrest he had been for more than ten days within the territory of the State of New York, and had freely mingled with the people of the same, and that the lecture which he had delivered in the State of New York, at the conclusion of which he was arrested, was not contrary in its principles or spirit to the laws of the State of New York, nor did the authorities of that state in any manner interfere with the delivery of said lecture or take any action because of the delivery thereof. That in said lecture this affiant did not advocate the violent overthrow of this or any other government or the assassination of any officials, state or federal, or utter any words

which were intended to or caculated to provoke lawlessness or disorder.

That he was immediately after his arrest taken to Ellis Island in the harbor of New York and was there informed that he was to be deported to Great Britain and that he was denied admission to the United States solely because he was an anarchist; that no definition of that word was submitted to this affiant, and this affiant in the said proceeding, if such it can be called, was denied the right of counsel, was proceeded against without any specific offense being charged against this affiant in writing or otherwise, and was denied a jury trial or any other adjudication of any question as related to this affiant which could be properly designated as a trial. That at the time of the said proceeding, in consequence of which he was ordered to be deported, as shown by this record, he was denied the right to consult or even the right to see counsel, and that ever since his incarceration at Ellis Island he has been obliged to talk with his friends and his counsel, subsequently retained, in the presence of one or more officials of the United States, who frequently made minutes of what occurred at such interviews. That he has not advocated the assassination or murder of any individual, whether private citizen or public official, nor has he advocated physical attack upon the government of the United States; but this affiant says that he is an anarchist in the sense that he believes that justice and order and human happiness can best be conserved and increased by voluntary association, and the abandonment of physical compulsion, and of the organized force known sociologically as territorial government, or "the state." That this is the mere conviction or opinion of this affiant, which is the result of study of political and economic subjects, and so far

as this opinion relates to any subject over which this or any other government has control or jurisdiction it is as foreign thereto as the conviction or opinions of this affiant upon religion, finance, taxation, or any other political or economic subject.

That to his personal knowledge in the United States and various countries of Europe there are great numbers of men distinguished by talent, learning and integrity, and devoted to the welfare of humanity, who find many evils in existing governments, and who have come to the conclusion by philosophic investigation that government as now established is theoretically vicious, and practically oppressive and unjust. That in the exercise of an inalienable right, these men are engaged in discussing and writing about the abolition of government, and that as such these men who are in the United States and such as are in England are unmolested by their respective governments because of those opinions; affiant had no reason to believe that he would be molested. That he has been since his arrest kept in close confinement on Ellis Island in a small cell, and under conditions which prevent him from doing even literary work which requires close application, and that he is informed and believes that in the general detention quarters there would be less opportunity for such work; and that he is allowed a credit at the restaurant of thirty cents a day by the government, which will buy only two cups of coffee, a bowl of soup and ten slices of bread, and therefore is compelled to depend upon contributions of money from sympathizers in order to obtain sufficient food; and that while the local officials in charge are personally courteous, these matters are not within their power to correct.

That this affiant, at great loss and suffering to himself has submitted to imprisonment in order that the questions of free speech and freedom of belief and of liberty in general may be passed upon by this court with reference to the immigration act of March 3rd, 1903; that the conditions are such at the immigration station at Ellis Island that this affiant with due regard to the principles of humanity should not be compelled to be detained therein until this case shall be reached by this court in the ordinary course of the call of the docket, which he is informed and believes will be in October next, unless said cause is advanced. And therefore he desires such relief from this court as without prejudice to his appeal from the decision excluding him from the United States, will release him from the imprisonment ot which he has been subjected for the past three months.

JOHN TURNER.

Sworn to before me this 3d day of February, 1904.

BOLTON HALL,
Commissioner of Deeds in and for the City of New York, State of New York.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1913.

No. 991.

UNITED STATES ex rel. JOHN TURNER

vs.

WILLIAM WILLIAMS, Commissioner, etc.

APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK.

BRIEF AND ARGUMENT ON MOTIONS TO ADMIT TO BAIL AND TO ADVANCE CAUSE FOR HEARING.

CLARENCE S. DARROW,
EDGAR L. MASTERS,
Attorneys for Appellant.

The Chicago-Wilkins Printing Co., 110-18 Madison St., Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

No. 561.

UNITED STATES ex rel. JOHN TURNER

vs.

WILLIAM WILLIAMS, Commissioner, etc.

STATEMENT OF THE CASE.

The importance of this case appropriately requires a statement of the law and the facts involved. It is conceived to be necessary to go to some extent into the merits of the case. The motion to admit to bail is more intimately connected with the merits of the case than the motion to advance the cause for hearing. The latter motion is more especially related to the circumstances in which the appellant has been placed by the authorities at Ellis Island, but is somewhat connected with the substance of the proceeding itself.

The arrest of the appellant, John Turner, and the order of his deportation were at the instance of the Secretary of Commerce and Labor, and references to the act creating the Department of Commerce and Labor and to the new immi-

gration act of March 3, 1903, will be made subsequently to elucidate the portion of this argument where it will be insisted that the Secretary of Commerce and Labor had no jurisdiction in this matter, and that the proceedings under the Secretary of Commerce and Labor against the appellant, John Turner, are absolutely null and void.

From the record now before the court it appears that the appellant, John Turner, had been in the United States for a period of about ten days at the time of his arrest; that he had come to the United States for the purpose of delivering a series of lectures upon various political and economic subjects. The record shows that the appellant has been a labor organizer; that he was until about five years ago engaged in the grocery business in and about the City of London, England; that for the last five years he has been an organizer for the Amalgamated Union of Shop Assistants and Warehousemen and Clerks of Great Britain, with headquarters located at 122 Gower street, London, England (See affidavit of John Turner); that three of his brothers reside in the United States, two in the City of Chicago, and one, Albert Turner, who is a naturalized citizen of the United States, resides at Silverton, Colorado. The appellant came to the United States for the purpose of delivering lectures and to visit with his brothers and to write articles on trade conditions in the United States for a publication known as "Grocer," published in the City of London, Eng., to which he is now, and for some time has been, a contributor.

The record does not show whether before October 23, 1903, the appellant had delivered any lectures in the United States. But on October 19, 1903, the Hon. George B. Cortelyou, Secretary of Commerce and Labor, issued his warrant, which was number 41,324, and was directed to Joseph Weldon, John

J. Willett, Edward J. Flannery, Charles H. Paul, or any of them, all United States inspectors, and which reads, so far as pertinent, as follows:

> "Whereas, from proof submitted to me, I have become satisfied that John Turner, anarchist, alien, who landed in the United States via Canada on the (exact date of admission not known) came into this country from England contrary to the prohibition of the Act of Congress approved March 3rd, 1903; and Whereas, the period of three years after landing has not elapsed I, George B. Cortelyou, Secretary of Commerce and Labor of the United States, by virtue of the power and authority invested in me by the above entitled act of Congress, do hereby command you to take into custody the said John Turner, alien, and return him to the country whence he came, at the expense of the United States. For so doing this shall be your sufficient warrant.
>
> Witness my hand and seal this 19th day of October, A. D. 1903." (See record.)

The return of the officer to the writ of *habeas corpus* below shows that a meeting was advertised by hand-bills to take place at Murray Hill Lyceum, 160-164 East 34th street, near 3d avenue, New York, Friday, October 23, at 8 P. M., and that the meeting would be addressed by the said John Turner on the subject of "Trades Unionism and the General Strike." This hand bill referred to the former visit of the appellant, John Turner, to the United States in 1897, and announced that Turner had recently refused to accept the candidacy to parliament because of his anarchistic principles. It further appears from the return of the officer and made a part of this record in this court, that Turner lectured at the place mentioned, on the evening of Friday, October 23, 1903, which was, as before seen, four days after the issuance of the warrant by the Secretary of Commerce and Labor. At the conclusion of the lecture delivered by Turner on that evening,

he was arrested, pursuant to the warrant already referred to, and at noon on Saturday, October 24, 1903, a Board of Special Inquiry appears to have been convened at the United States Emigrant Station on Ellis Island, which board was composed of Charles Semsey, chairman, Joseph Weldon and Luther C. Steward, inspectors. At this hearing an inspector by the name of John J. McKee appears to have been sworn, but by whom is not clear, and was questioned by the Commissioner. McKee, it appears, was present at the Murray Hill Lyceum meeting and took note of what Turner had said at that place and time. Inspector Weldon, a member of the Commission which tried the appellant at the immigration station, was then sworn, and it appears from his testimony that he had executed the warrant in question to arrest the said John Turner; that he had searched the person of the said Turner, and had found thereupon a copy of a paper entitled "Free Society," a periodical of anarchistic thought, work and literature published in Chicago, Illinois, and also took from his person a certain card announcing a meeting to be held on November 9, 1903, at Bronx Casino, 2994 and 2998 3d avenue, to be addressed by John Turner, on the subject of the Chicago Tragedy. The appellant, John Turner, was then affirmed, evidently having refused to be sworn, and admitted that the statement attributed to him at the Murray Hill Lyceum meeting, a transcript of which is attached to the return as "Exhibit A," was one which he very probably would make. Turner said that he did not consider himself an emigrant, and when asked by Mr. Williams, the Commissioner, whether he intended to remain in the United States any length of time, he answered "Probably for a few months. I hope to get through to see my brother who is in Colorado, to meet a number of friends here and to do some business here." There-

upon Mr. Weldon, a member of the board which passed upon Turner's acts, made the following motion:

> "Mr. Chairman: It having been shown by the evidence here, and also by the admissions made by the defendant, John Turner, that he is an anarchist, and that he is here in violation of the Act approved March 3rd, 1903, I move that he be excluded and not be permitted to land in the United States, and that he be deported.
>
> "Mr. Steward: I second the motion."

The board decided on unanimous vote, that John Turner is an alien found in the United States in violation of law, and that he be deported.

It thus appears that one of the officers who passed upon the right of the appellant to enter the United States had executed the warrant by which Turner was arrested, also testified against him at the supposed trial of Turner, and moved that he be excluded, and also voted on the order by which he was excluded.

An appeal was taken from the decision of this Board to the Secretary of Commerce and Labor, who in passing upon the appeal appears to have said, "The evidence shows that the appellant declined to give exact information as to the manner in which he secured admission to this country, although he swears that he arrived here about ten days ago. He admits that he is an anarchist and an advocate of anarchistic principles, which brings him within the class defined by Section 38 of the Act approved March 3, 1903." The appeal was therefore dismissed. As before seen, Section 38 excluded from the United States "persons who disbelieve in or who are opposed to all organized government, or who are members of or affiliated with any organized entertaining and teaching such disbelief or opposition in and to all organized government," etc.

The matters which appear to have been emphasized at the trial of Turner, if such it could be called, consist of certain pamphlets and papers, including a publication by Peter Kropotkin, which was found at the meeting at the Murray Hill Lyceum, and also certain language which was used by Turner at that meeting, which is as follows:

> "And to me at any rate, as an anarchist, as one who feels that the people must emancipate themselves I look forward to this struggle as an opportunity for the workers to assert the power that is really theirs."

This language follows certain statements made by Turner at the meeting in question with reference to the increasing power of organized labor, and to the efforts which are being made by employers towards organizing in order to crush labor unions. He predicted a general strike, and pictured to the audience the result of a general tie-up of industries in the City of New York, and he stated that all over Europe preparations for a general strike are being made, and that such a strike will spread over the entire industrial world.

The appellant, after the dismissal of his appeal to the Secretary of Commerce and Labor, sued out a writ of *habeas corpus* in the Circuit Court of the United States for the Southern District of New York, and alleged that the Act under which he was deported was contrary to the Constitution of the United States. Upon consideration of the writ of *habeas corpus*, the same having been allowed, the judge at circuit decided in favor of the constitutionality of the act of March 3, 1903, and dismissed the writ, after having issued it, and remanded the appellant to the custody of the immigration officers at Ellis Island, there to be held until the cause shall be passed upon by the Supreme Court of the United States. An appeal was taken from the decision of the Circuit Court of the United States to this court, and, as under the

circumstances this cause cannot be heard until October, 1904, or later, it was deemed necessary to apply to this court for an order permitting appellant to give bond pending this appeal, and also to advance this cause for hearing.

Affidavits which are filed in connection with the motions now made, show that the appellant is confined in the basement of the United States Immigration building on Ellis Island, in the harbor of New York; that he is kept in a steel cage, which is located fifteen or twenty feet from any window, and is allowed the sum of thirty cents a day at the restaurant with which he is able to buy ten slices of bread, two bowls of soup and coffee each day. His surroundings are such that in the interest of humanity he should not be compelled to endure them any longer than may be necessary. And it was owing to his situation that it was deemed expedient to make these motions.

Specification of Errors.

Out of the assignment of errors which have been filed in this cause it is not necessary or even proper to consider all of them at this time. They will be argued at length in the brief on the merits when the cause is finally submitted. For the present it is sufficient in our judgment in the interest of brevity to formulate from the assignment of errors three propositions under which the questions bearing most forcibly upon these motions may be discussed.

First. Was not the act of February 14, 1903, repealed by the act of March 3, 1903; and were not the proceedings by and under the Secretary of Commerce and Labor without law and void?

Second. Has the Federal government under any of its powers either expressed or implied, either clear or specula-

tive any power to exclude any alien from the United States because of his beliefs on the subject of government or any other subject?

Third. Does not the act of March 3, 1903, strike at the right of the people to assemble and at the right of free speech; at the right of a grand jury presentment; at the right of a public trial before a jury; at the right of being confronted by the witnesses; at the right of knowing the nature of the accusation; at the right of having counsel; at the right of procuring witnesses in the prisoner's own behalf, and at the very form and essence of Liberty itself?

ARGUMENT.

I.

WAS NOT THE ACT OF FEBRUARY 14, 1903, REPEALED BY THE ACT OF MARCH 3, 1903; AND WERE NOT THE PROCEEDINGS BY AND UNDER THE SECRETARY OF COMMERCE AND LABOR WITHOUT LAW AND VOID?

Even if the law under which the appellant, John Turner, was ordered to be deported, be a constitutional enactment, the validity of the proceedings against the appellant and the legality of his detention are overthrown by the palpable repugnance between the acts of February 14, 1903, and March 3, 1903, as already adverted to in the statement of the case.

Moreover, the 36th section of the Immigration Act, passed March 3, 1903, provides

> "That all acts and parts of acts inconsistent with this act are hereby repealed: Provided, that this act shall not be construed to repeal, alter or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent." (Compiled Stat. of 1903, p. 185.)

The Act of February 14, 1903, creating the Department of Commerce and Labor, purports to transfer to that department the service, among others, of the Commissioner General of Immigration, the Commissioner of Immigration, the Bureau of Immigration and the immigration at large. (Sec. 4, Comp. Stat. of 1903, p. 43.)

Section 10 purports to confer all power upon the Secretary of Commerce and Labor, which hitherto existed in the head of any other department so transferred. The latter par-

agraph of this section specifically enumerates, however, certain specific powers relating to the details of various service, which are transferred to the Department of Commerce and Labor. This is the whole of the act of February 14, 1903, so far as pertinent to the present discussion.

On the other hand the new Immigration Act, passed March 3, 1903, descends into the details of the regulation of immigration. Section 1 provides for the collection of head money, to be paid into the United States treasury, and provides that it shall be disbursed under the direction of the Secretary of the Treasury. It empowers the Commissioner General of Immigration, under the direction of the Secretary of the Treasury, to compromise any lien created by the section against vessels on account of such head money. Sections 2 to 18, inclusive, specify the aliens excluded, the penalties for bringing in excluded aliens, and certain regulations not necessary to detail now. Section 19 provides for immediate deportation of any alien who unlawfully comes into the United States. It empowers the Commissioner General of Immigration, with the approval of the Secretary of the Treasury, to suspend the deportation of any alien and for his support out of the "immigration fund" accumulated as hereinbefore detailed out of the head money collected and which is under the control of the Secretary of the Treasury.

Section 21 empowers the Secretary of the Treasury to deport any inadmissible alien within three years after he may have landed in the United States.

Section 22 empowers the Commissioner General of Immigration, under the direction of the Secretary of the Treasury, to have charge "of the administration of all laws relating to the immigration of aliens." The Commissioner, with the approval of the Secretary of the Treasury, may detail immigration officers for temporary service in foreign countries.

Section 24 empowers the Secretary of the Treasury to appoint immigrant inspectors, officers, clerks and employes and to fix their compensation, while Section 23 empowers the Secretary of the Treasury to prescribe the duties of the Commissioner of Immigration.

Section 25 provides for appeals by aliens to the Secretary of the Treasury from decisions of the Commissioner of Immigration, whose decision shall be final.

And as before seen, Section 36 repeals all acts or parts of acts inconsistent with this act.

Now, the warrant upon which the appellant was arrested was issued by the Secretary of Commerce and Labor. The appellant was tried by a board presumably operating in conjunction with the Department of Commerce and Labor. The whole field of jurisdiction seems to have been taken by the Department of Commerce and Labor.

The warrant of the Secretary of Commerce and Labor recited that the appellant was in the United States "contrary to the prohibition of the act of Congress, approved March 3, 1903," and that "the period of three years after landing has not elapsed." The order of the Secretary of Commerce and Labor dismissing Turner's appeal found that "he is an anarchist and an advocate of anarchistic principles, which bring him within the class defined by Section 38 of the act approved March 3, 1903." So that the Secretary of Commerce and Labor looked to an act for his authority which in every provision contemplates that the Secretary of the Treasury shall exercise it. It is an act, too, which by express terms repeals all acts and parts of acts inconsistent with it. This repeal relates undoubtedly to the immigration service which by the previous act of February 14 had been transferred to the Department of Commerce and Labor.

The act of March 3, 1903, went into force on March 3, 1903. "When no other time is fixed a statute takes effect from the date of its passage—from the date of the last act necessary to give a bill the force of law."

Sutherland on Stat. Const., Sec. 104.
Matthews v. *Jane*, 7 Wheat., 164.
Louisville v. *Bank*, 104 U. S., 469.

It is true that the act of February 14, 1903, did not go into effect until July 1, 1903, except as to the transfer of offices, bureaus, etc., engaged in whole or in part in statistical or scientific work. (Sec. 12.) We need not assume now to say whether Section 12 may be construed to pass over to the Secretary of Commerce and Labor the immigration service under the immediate force clause of Section 13. The fact that the act of March 3, 1903, by operation of law, went immediately into effect and the act of February 14, 1903, did not go into effect until July 1, 1903, avails nothing in a legal sense. The act of March 3, 1903, expresses the later legislative will and explicitly repeals all other laws inconsistent with it. Its terms are hopelessly opposed to the terms of the act of February 14, 1903. The provisions of the two acts are palpably repugnant. Both cannot stand.

> "Subsequent legislation repeals previous inconsistent legislation whether it expressly declares such repeal or not. In the nature of things it would be so, not only on the theory of intention, but because contradictions cannot stand together."
>
> Sutherland on Stat. Const., Sec. 138.

See

Murdock v. *Mayor of Memphis*, 20 Wall., 590.
U. S. v. *Tynen*, 11 Wall., 88.
Brown v. *U. S.*, 171 U. S., 629.

Mr. Sutherland in his work on Statutory Construction, Sec. 140, used this language:

> "In organizing the powers of government there is a definite and precise scheme or plan and a unity and singleness of means employed to carry it into effect. There is but one chief magistrate, one legislature, one judiciary. There is but one revenue system, one police system. Public duties are defined and imposed by officers designated with certainty without duplication or confusion, except by inadvertence. The exercise of power by one over another must be authorized by law; its possession and scope will be such as is granted; when granted if the mode of its exercise be also prescribed it must be followed.
>
> In the grant and in the regulation of the mode of exercise there is an implied negative; an implication that no other than the expressly granted power passes by the grant; that it is to be exercised only in the prescribed mode."

In Section 399 the same author used this language:

> "When a right is given by statute and a specific remedy provided, or a new power and also the means of executing it are therein granted, the power can be executed and the right vindicated in no other way than that prescribed by the act."

In Section 137 the same author uses this language:

> "A repeal will take effect from any subsequent statute in which the legislature gives a clear expression of its will for that purpose. * * * Where a statute repeals all former laws within its purview the intention is obvious and is readily recognized to sweep away all existing laws upon the subjects with which the repealing act deals."

Upon the two-fold ground of express repeal and clear repugnance between the two acts we urge the invalidity of the proceedings against the appellant by the department of commerce and labor. The warrant issued by the secretary of com-

merce and labor is the foundation of the appellant's detention. That warrant directs certain immigration inspectors to take "the said John Turner, alien, and return him to the country whence he came." By the order of October 26, 1903, the secretary of commerce and labor directed that Turner's appeal be "dismissed and you are directed to deport the said John Turner in conformity with warrant now in your hands for execution." Pursuant to these acts of the secretary of commerce and labor the appellant was held in custody at the time of the issuance of the writ of *habeas corpus*. Under these same acts he is still held in custody.

The subject affords opportunity for more comprehensive discussion than seems now appropriate to the motions presented. The principles invoked are, however, fundamental. Their uniform recognition may be shown by amplifying the citation of authorities, without at all adding to their inherent force. This court grants the writ of *habeas corpus* in favor of liberty. If the appellant's detention is unlawful for the reasons now suggested, it is just as unlawful as if he were held by an unauthorized proclamation of an executive officer, whether high or low. It would not be pretended for a moment that he could be imprisoned upon the order of an interstate commerce commissioner, or upon the order of a superintendent of the mint. Now, as the whole immigration service was taken from the department of commerce and labor and placed with the department of the treasury where it hitherto had been, can it be said that the actions of the secretary of commerce and labor are other than null and void?

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II.

HAS THE FEDERAL GOVERNMENT UNDER ANY OF ITS POWERS, EITHER EXPRESSED OR IMPLIED, EITHER CLEAR OR SPECULATIVE, ANY POWER TO EXCLUDE AN ALIEN FROM THE UNITED STATES BECAUSE OF HIS BELIEFS ON THE SUBJECT OF GOVERNMENT OR ANY OTHER SUBJECT?

As already seen, the secretary of commerce and labor based his order of deportation upon the 38th section of the "Immigration Act" of March 3, 1903. This reads: "That no person who disbelieves in or who is opposed to all organized government, etc., shall be permitted to enter the United States., or any territory or place subject to the jurisdiction thereof." An alien may believe in monarchy and be admitted to advocate its principles. He may believe in resurrecting Byzantinism in its most hateful forms, and be admitted to preach its doctrines. These principles and doctrines are inimical to the republican system which all Americans fondly cherish. Monocrats disbelieve in the republican system, yet they may freely enter the United States. This is mentioned only to evidence the spirit of this law. For by what process of reasoning can the Federal Government be held to have control over the beliefs of persons under it or who seek to come under it? That question was settled when this republic was founded. At that time the Anglo-Saxon race had completed one of its most remarkable cycles. Freedom of belief, freedom of speech and of the press had triumphed over the Stuarts. The Bill of Rights had been engrafted upon the English constitution through the revolution of 1688 and the influence of William III. Shall these rights remain settled; or are they

subject to every passing spasm of alarm? It is true that the word "anarchy" is ominous.

But so was the word "dissenter" and the word "nonjuror," Presbyterian and heretic ominous. The word "republican" was hateful to James II. "Whig" and "whiggery" have been symbols of scoffing and reproach. But the question is not of the rightfulness of any belief. If it were, some one has the power to decide that question. That conceded freedom of belief and of speech falls. Because when governments in times past held that it was wrong to be a dissenter, or a republican, when the reformation was branded as wicked and revolutionary, there was coupled with such judgment the power to proscribe their adherents. Governments always have the power to eradicate the wrong. By placing themselves on the side of what is right and against what is wrong, that is, by prejudging these questions they have managed in all ages to neutralize the very opposition of liberty herself. An administrative process like this which commits to the constabulary the power so to construe the law as to exclude from our shores such men as Herbert Spencer or Count Tolstoi in order that discussion as to the limits of government or the abolition of government may be repressed cannot be said to be consonant to the constitution of a republic "conceived in liberty."

> "To call any proposition certain while there is anyone who would deny its certainty if permitted, but who is not permitted, is to announce that we ourselves and those who agree with us are the judges of certainty and judges without hearing the other side."

In that admirable essay "Liberty," by John Stuart Mill we find the following principles announced:

> "First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be

true. To deny this is to assume our own infallibility.

Secondly, though the silent opinion be an error, it may, and very commonly does contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinion that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of vital effect being lost, or enfeebled, and deprived of its vital effect on the character and conduct the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience."

We submit that nothing can conduce more to the permanency of the republican system of the United States than a free opportunity to know through the avenues of discussion and literature that neither monarchy nor anarchy are comparable to the repulican system in which the liberty of each man is limited only by the like liberty of all men and that limitation preserved by firm and incorruptible authority. No one claims or can claim upon this record that the appellant has advocated the overthrow of this or any other government, or that he has advocated at any time the assassination of any of the officials of this or any other government. Still less can it be claimed that he harbors opinions that these things are permissible and right. He has been excluded because he "disbelieves" in government. And even if after arriving on these shores he had advocated assassination, upon what jurisdiction would devolve the duty of deal-

ing with him? We candidly submit that in this policy there is comprised such a confusion of thought upon the nature of our federal system as to awaken wonder if clear thinking upon state and federal authority is possible in moments of legislative zeal. Upon what construction of the Constitution may the federal arm reach over into the territory of a sovereign state and seize one of its denizens or sojourners and transport him to a distant land? Under this law this might be done at any time within three years, though the person may have in the meantime taken steps to be naturalized and have become settled in business and become one of the supporters of the state government. The regulation of commerce with foreign nations or between the several states has never extended beyond the moment when the subject became massed with the personal property of the state. This is the limit of judicial construction. An alien is a "broken package" as soon as he is commingled with the people of a state.

During the excitement of the French revolution Great Britain, in spite of the protests of such intellects as Lord Landsdowne, Mr. Fox, Mr. Sheridan and Mr. Grey, fell into one of the lowest states of obscurantism which it ever reached. The act of Congress now before the court bears many resemblances to the laws then enacted. Mr. Fox denounced them as "utterly irreconcilable with the principles of the constitution." As to the power given to the secretary of state to deport foreigners, Mr. Grey said that it was a "measure of oppression" and gave "power for the exercise of which no mean was responsible." Where is the responsibility when an alien may be deported from the United States by a board whose members are appointed by an executive secretary; *whose members may be sheriffs,*

judges, witnesses and executioners by turns, as this present record shows was the case with this appellant?

If in a monarchial country having no written constitution an alien law similar to the one here is "utterly irreconcilable with the privileges of the constitution," much more can it be said that the present law is utterly irreconcilable with the privileges of a written constitution ordained "to establish justice" and to secure the blessings of liberty to ourselves and our posterity."

> "Happy, thrice happy," said General Washington, "shall they be pronounced hereafter who have contributed anything in erecting this stupendous fabric of freedom and empire; who have assisted in protecting the rights of human nature, and establishing an asylum for the poor and oppressed of all nations and religions."
>
> Bancroft's History of the Constitution, Vol. 1, p. 101.

But the "Alein and Sedition" laws were passed during the life of Washington himself. Such are the actions and the reactions of nations. The history of these laws is known to all. The reasonings of Mr. Madison, the "father of the constitution" upon the Alien and Sedition Acts, bear directly upon the act of March 3, 1893. The "Alien and Sedition" Acts were passed with the professed object of sending from the territory of the United States such persons "as may be dangerous to its peace and safety" and to prevent false, scandalous and malicious writings against the United States, either house of congress or the president so as to bring them or either of them into contempt or disrepute. These objects are laudable enough. And so it can be said by way of popular appeal that the professed object of the law of 1903, is laudable. But this is an irrelevant conclusion. Such claims are beside the point. We are brought then to the question

whether the law of 1903, is constitional, that is, whether the Congress had the constitutional power to enact it. The exclusion acts whether relating to Chinese, paupers, idiots or other classes of persons rests upon a precarious foundation. In the debates in Congress in 1798, upon the Alien Act then depending Mr. Tazewell a member said that he knew but of one power given to Congress by the constitution which could exclusively apply to aliens and that was the power of naturalization which could only authorize Congress to give or withhold citizenship.

Elliott's Debates, Vol IV, p. 440.

The opinion of Mr. Jefferson set out in the Kentucky resolutions are familiar, and in the interests of brevity will not be dwelt upon at this time.

But the power to exclude aliens has been predicted either upon the sovereignity of the United States, or its power as a nation which is another way of stating the same thing; or upon the commerce clause of the constitution itself. As to the first, sovereignity does not inhere in the United States government, nor in Congress. Sovereignty or the paramount power resides ultimately with the people under our systems and the constitution expresses the sovereign powers of agency which have been committed to the Federal Government. To base the power to exclude aliens either upon the sovereignity of the United States or upon their character as a nation is to leave the middle term of the implied syllogism undistributed. For it is well known as well from the repeated decisions of this court as from the constitution itself, particularly the tenth amendment, that the United States have only such power as the constitution expresses or such power as flows from necessary implication from expressed powers. The

tenth amendment among others, resulted from the resolutions of the states which originally acceded to the constitution requiring the constitution to express that all powers not conferred were reserved to the states or the people. These considerations need not be amplified upon these motions and are only suggested now because they tend to place the law of 1903, in the light of historic truth. The ground, however, upon which previous exclusion acts have been validated was furnished by the commerce clause of the constitution and to the interpretation put upon that clause by Chief Justice Marshall in *Gibbons* v. *Ogden,* 9 Wheat., 1.

Yet the only thing decided in this case was that commerce includes navigation. It is true that the chief justice defined commerce so comprehensively as to include other subjects, but these other subjects were not before the court. His definition of commerce, except so far as he held it to embrace "navigation," commends itself not as authority, but as his individual idea of the subject. In fact, the decision explains its own definite authority in this language:

> "The questions, then, whether the conveyance of passengers be a part of the coasting trade, and whether a vessel can be protected in that occupation by a coasting license, are not and cannot be raised in this case."

The rule is well known. Chance expressions outside of the case do not bind. We submit that the commerce clause has received the utmost limit of construction. So far as it relates to other exclusion acts, the interest here is only academic. But this bring us to the point as to whether the most fanciful interpretation of the right to regulate commerce can extend to the development of power to exclude aliens for beliefs or disbeliefs in government or any other subject. For if an alien can be excluded for his

beliefs or disbeliefs in government, he can be excluded for his beliefs or disbeliefs in religion, science or philosophy. The reason for exclusion upon these grounds can be as well raised in some necessity evoked for the occasion, as upon the ground for beliefs or disbeliefs in government. What sovereignty outside of the constituent sovereignty of the English Parliament can do this? What stretch of the commerce clause which does not clearly exhibit a transparent fallacy can do this? This subject will be discussed at large in the argument proper. For the sake of illustration, let a few supposable cases be cited. If some religious denomination should obtain the political mastery of this country, it might well occur to it that all other religious sects were inimical to its power and prestige. In such a condition of society laws veiled with pretensions of public welfare, but actually directed toward preserving the existing order, would not be attacked by the party of stability. So that an act might be passed excluding from these shores all persons who disbelieved in the creed of that denomination. If the right to exclude any or all aliens depends upon the sovereign character of the general government or upon the commerce clause of the Constitution, would it avail anything to urge that the first amendment of the Constitution provides that Congress "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"? The whole argument is closed when it is asserted that the right to exclude is traceable to sovereignty or the commerce clause. With the closing of the argument the first amendment to the Constitution becomes futile. So it might be said that the suppositious law did not respect an establishment of religion or prohibit the free exercise thereof. It might be said nothing is done to establish any religion;

nothing is done prohibiting the free exercise thereof. And yet it would be obvious to anyone that the Constitution had been nullified by indirection. Can anything be plainer than this, that "an administrative process" which should prevent any religious denomination, except one, from being recruited by adherents from foreign lands would presently and ultimately affect the free exercise of religion? Did not our ancestors come to these shores for religious liberty; and if others might not, because of religious belief, come now to join their descendants, would not religious liberty be vitally attacked? The possible cases suggest themselves on all sides and run into all shades of contradiction and absurdity. Or, suppose that Congress should enact a law that no one should be admitted to the United States who disbelieved in our present revenue system, or believed in the theory of single tax, or disbelieved in monogamy, or who came for the purpose of writing or speaking on his beliefs or disbeliefs touching any of these subjects, who would pretend that the law could be justified in the commerce clause of the Constitution, or validated by the sovereign character of the general government? Can there be the slightest doubt that such laws would abridge the freedom of speech and of the press? Abridge means to shorten or diminish and not to abolish or destroy? The first amendment to the Constitution can by no construction be held to limit Congress in a particular way or as to a particular place. It limits Congress absolutely; for it reads, "Congress shall make *no law* * * * abridging the freedom of speech, or of the press."

The distinguished judge at circuit held in this case:

> "As to abridgement of the freedom of speech, that clause deals with the speech of persons in the United

> States, and has no bearing upon the question what persons shall be allowed to enter therein." (Fed. Rep., Adv. Sheets, Jan. 28, 1904, 253.

But if this be true, then any paramount party devoted to any particular belief can through the agency of the government exclude all aliens who come here to lecture or to be citizens, because of their disbelief in the belief of such party or because of their belief in something else. Does not this legitimate reduction of the argument show the whole position to be fallacious? A construction which lifts the commerce clause of the Constitution and the metaphysical sovereignty of the general government over an express amendment procured by the original states out of the abundance of caution cannot stand the verdict of history.

To interfere with beliefs necessarily interferes with their expression. In the present case the appellant was arrested at the close of a lecture, and extracts of that lecture were embodied in the record at the hearing before the navigation board and emphasized as a ground of action.

III.

DOES NOT THE ACT OF MARCH 3, 1903, STRIKE AT THE RIGHT OF THE PEOPLE TO ASSEMBLE AND AT THE RIGHT OF FREE SPEECH; AT THE RIGHT OF A GRAND JURY PRESENTMENT; AT THE RIGHT OF A PUBLIC TRIAL; AT THE RIGHT OF BEING CONFRONTED BY THE WITNESSES; AT THE RIGHT OF KNOWING THE ACCUSATION; AT THE RIGHT OF HAVING COUNSEL; AT THE RIGHT OF PROCURING WITNESSES IN THE PRISONER'S OWN BEHALF, AND AT THE VERY FORM AND ESSENCE OF LIBERTY ITSELF?

We respectfully refer the court to the opinion of Judge Ballinger, of the District Court of the United States for the District of Oregon on October 26, A. D. 1903, and found in the Fed. Rep. Adv. Sheets of January 28, 1904, at page 231, which seems to indicate a crying need for an authoritative expression by this court upon the right of aliens and others who are alleged to come within the scope of the immigration laws, and who are taken into custody by the officers charged with its administration.

Without, at the present time, discussing the numerous points which arise under this branch of the argument, it must be apparent that the appellant in this case was denied every right which the Constitution has explicitly thrown about every person who is charged in any way with something for which he is amenable to custody or imprisonment. This record shows, as before mentioned, that he was arrested upon the warrant of the Secretary of Commerce and Labor, and was not charged in any specific form by anyone with anything; that he was arrested by an inspector, who afterwards was

one of his judges, and who was, upon the trial before the immigration board, a witness against appellant. The supposed trial was held in secret, as provided specifically by the Act of March 3, 1903. He was denied the right of counsel, and had no means whatever of obtaining witnesses in his own behalf. We are aware of the fact that it has sometimes been stated that deportation is not a penalty, but it has also been stated that it is a penalty. If the appellant had remained in this country for two years, or under three years, and had acquired property and built up a business, or had married and established a home, it is difficult to conceive a greater penalty than that which would have compelled him to leave his domicile and abandon his surroundings and his business. In the appellant's case the penalty of deportation is not so severe, because the circumstances are different. But that a penalty has been imposed upon him seems to us to be beyond any sort of dispute. Those prosecutions are criminal in which a penalty is imposed, and so we say that the sixth amendment to the Constitution of the United States is violated by the Act of March 3, 1903. These matters will be fully dwelt upon when the argument proper is presented.

Form of the Bond.

We anticipate that the objection to admitting appellant to bail while this case is pending will be that the very object of the act of March 3, 1903, will thereby be defeated. It may be argued that if the appellant is admitted to bail that he necessarily will have the liberty to go where he likes within the confines of the United States, and that no power can prevent his discussing and talking upon such subjects as he pleases. This objection necessarily exposes the object

of the act of March 3, 1903; that is, that it seeks to abridge the freedom of speech. Yet appellant might be admitted to bail until this case can be decided, the condition of the bond to be that he depart from the United States and remain without its territory until this case is decided. Of course, if it is decided adversely to him, then he cannot return to the United States; but if it should be decided in his favor then he might return. But in the interval the case will be put in such condition by his leaving the United Sates and giving bond not to return unless the decision of this court shall be favorable that all questions will be put at rest. Or the form of the bond might be that he may remain in the United States, but not to deliver lectures or addresses while this cause is pending, or upon such other conditions as this court may determine. The affidavits show that ample bond can be given, in such sum as the court thinks proper, and may be given either in this court or in the Circuit Court for the Southern District of New York, as may be determined.

We also earnestly request the court to advance this cause for hearing so that even if the appellant is admitted to bail his rights may be as speedily determined as possible.

Respectfully submitted.

CLARENCE S. DARROW,
EDGAR L. MASTERS,
Attorneys for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 561.

THE UNITED STATES *ex Rel.* JOHN TURNER, *Appellant*,

vs.

WILLIAM WILLIAMS, *United States Commissioner of Immigration, &c.*

AFFIDAVIT OF SAMUEL GOMPERS IN SUPPORT OF MOTION TO ADMIT TO BAIL.

UNITED STATES OF AMERICA:

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1903.

UNITED STATES *ex Rel.* JOHN TURNER
vs.
WILLIAM WILLIAMS, *Commissioner, &c.* } No. —.

SAMUEL GOMPERS, being first duly sworn, deposes and says: That he is of lawful age and is president of the American Federation of Labor and has his headquarters and office in the city of Washington, in the District of Columbia;

that in the year 1896, when this affiant was at the office of the American Federation of Labor in the city of Indianapolis, in the State of Indiana, he met the above-named John Turner, and that this affiant believes and remembers a meeting was called by the Central Labor Union of that city, and that the said John Turner addressed the said meeting, and this affiant presided at the same. This affiant further says that the said John Turner, at the said meeting, spoke and argued in favor of the organization of the working people into labor unions, and that there was nothing in the language used by the said John Turner at the said meeting in his said address intimating violence, disorder, force, revolution, or lawlessness of any sort; that he never at any time has heard the said John Turner discuss the subject of anarchy, philosophic or otherwise, and has never at any time in any of the conversations which he has had with the said John Turner in 1896, at Indianapolis, heard the said John Turner intimate or declare himself in favor of violence, disorder, force, revolution, or lawlessness, or advocate the violent overthrow of any government or the assassination of any officials of any government.

This affiant further says that the said Turner is a highly respected member of the London Union of Shop Assistants, which corresponds to the organizations of clerks of the retail stores of the United States of America.

That he recently received a letter from one James MacPherson, who is the general secretary of the Union of Shop Assistants, which letter is embodied and made a part of this affidavit as Exhibit "A;" and further affiant saith not.

SAM'L GOMPERS.

Subscribed and sworn to before me this 11th day of February, 1904.

[SEAL.]

HARRY S. WELCH,
Notary Public, D. C.

[Lithograph heading of National Amalgamated Union of Shop Assistants, etc.]

LONDON, W. C., *Jan. 14th*, 1904.

Mr. SAMUEL GOMPERS,
American Federation of Labour. Jan. 27, 1904.

DEAR SIR: At the last meeting of our executive, I was instructed to send you a cablegram as follows:—"Executive, representing 13,000 members National Union of Shop Assistants, meeting yesterday, protests against Turner's arrest and threatened deportation. Violation right free speech. Circulate widely American press. Macpherson. General secretary." This was dispatched on the 7th Jan'y and herein confirmed.

We have also written our foreign office, and the British ambassador at Washington city to do all in their power to assist in securing John Turner's release on bail, pending the decision of the Supreme Court of America.

With fraternal greetings,

Yours faithfully, JAS. MACPHERSON,
General Secretary.

"EX. A."

[Endorsed:] 561. United States *ex rel.* John Turner, appellant, *vs.* William Williams, com'r, etc., appellee. Darrow & Masters, attorneys for appellant, 1202 Ashland block, Chicago, Ill.

[Endorsed:] File No. 19,212. Supreme Court U. S. October term, 1903. Term No. 561. The U. S. *ex rel.* John Turner, app't, *vs.* Wm. Williams, U. S. com'r of immigration. Affidavit of Samuel Gompers. Filed Feb'y 23d, 1904.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1903.

No. 561.

UNITED STATES ex rel. JOHN TURNER

vs.

WILLIAM WILLIAMS, Commissioner, etc.

BRIEF AND ARGUMENT OF APPELLANT.

CLARENCE S. DARROW,
EDGAR L. MASTERS,
ATTORNEYS FOR APPELLANT.

H. G. DARROW, LAW PRINTER, 341-351 DEARBORN ST., CHICAGO.

33151

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1903.

UNITED STATES EX REL. JOHN TURNER. vs. WILLIAM WILLIAMS, COMMISSIONER OF IMMIGRATION.	No. 561.

BRIEF AND ARGUMENT OF APPELLANT.

RECAPITULATION OF FACTS.

In the brief heretofore filed in support of the motions to admit the appellant to bail and to advance the hearing of this cause a statement of the case was made. For ready reference, however, it is deemed a convenience to the court to recapitulate the essential features of that statement.

On March 3rd, 1903, Congress passed an act entitled "An Act to Regulate the Immigration of Aliens into the United States." (See U. S. Compiled Statutes Supplement 1903, p. 170.)

The second section of this act provides that idiots, insane persons, epileptics, and persons who have been

insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with a loathsome or with a dangerous contagious disease; persons who have been convicted of felony or other crime or misdemeanor involving moral turpitude; polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence of the government of the United States or of all government or of all forms of law, or the assassination of public officials; and prostitutes, shall be excluded from admission into the United States. A proviso of this section withdraws from the inhibitory portion of the section those persons who have been convicted of offenses purely political not involving moral turpitude; and also provides that skilled labor may be imported, if labor unemployed of like kind cannot be found in this country. Another proviso excludes from the operation of the act professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants.

The next succeeding portions of the act relate to the administration of the law. But to instance the slovenliness with which the act was drawn, it may not be improper to call the attention of the court to the fact that section 34 forbids the sale of intoxicating liquors within the limits of the capitol building. While section 38 recurs to the subject treated in section 2 and designates a distinct class of persons who shall be excluded from admission to the United States.

Section 38 is the one under which the appellant was ordered to be deported. The Secretary of Commerce and Labor, in dismissing the appeal which was taken by Turner from the decision of the Board of Immigration, said that Turner came within the provisions of section 38. This section is, so far as pertinent, as follows:

> "That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity or propriety of the unlawful assault or killing of any officer or officers, either of specific individuals or of officers generally of the government of the United States, or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any territory or place subject to the jurisdiction thereof. This section shall be enforced by the Secretary of the Treasury under such rules and regulations as he shall prescribe."

Section 38 also provides that any person who knowingly aids or assists any person designated in this section to enter the United States or any territory or place subject to the jurisdiction thereof, or connives or conspires with any person or persons to allow, procure, or permit any such person to enter therein except pursuant to such rules and regulations made by the Secretary of the Treasury, shall be fined not more than $5,000 or imprisoned for not less than one

year, nor more than five years, or both. Further references to this act are made in an "Historical View of the Immigration Acts" *post.*

The appellant, John Turner, is a subject of Great Britain who, for the last five years, as this record shows, has been engaged as an organizer for the Amalgamated Union of Shop Assistants and Warehousemen and Clerks of Great Britain. He came to the state of New York in the early part of October, 1903, for the purpose of delivering lectures in most of the large cities of the United States, and also to gather material and write articles on trade conditions in the United States for a publication known as "Grocer", published in the City of London, England. It is a fair inference from the record that Turner had delivered no lectures before the evening of October 23rd, 1903. But on October 19th, 1903, the Secretary of Commerce and Labor issued his warrant, which was number 41,324, and directed to certain inspectors at New York, commanding them to arrest John Turner and deport him to the country from whence he came. On the evening of October 23rd, 1903, Turner addressed a mass meeting at the Murray Hill Lyceum, 160-164 East 34th street, New York City, on the subject of Trade Unionism and the General Strike. At the conclusion of the lecture Turner was arrested, pursuant to the warrant already referred to, and was searched by the officer who arrested him, with the result that a publication called "Free Society" and a card announcing a mass meeting for November 9th, at which Turner was billed to speak, a pamphlet entitled "Down with the Anarchists" were taken from his person. A book entitled "Modern Science and An-

archism" by the well known Prince Kropotkin was found at the meeting where Turner was arrested, and was produced before the Immigration Board.

It appears that at this meeting of October 23, 1903, the Immigration Board, or the Department of Commerce and Labor had persons present who reduced to shorthand all or portions of Turner's speech. At any rate extracts of his speech were offered in evidence before the Immigration Board. Notwithstanding the fact that the warrant for Turner's arrest was issued four days before he was arrested, and that the warrant specified that Turner had come fom England to the United States contrary to the prohibition of the Act of Congress approved March 3rd, 1903, and that he was an anarchist, nothing was produced against him on the alleged trial before the Immigration Board, other than these extracts from Turner's speech, and the cards and papers taken from his person and the book of Prince Kropotkin found and taken from where the Turner meeting was held.

On the next day at noon a Board of Special Inquiry, or Immigration Board, was convened, and the officer who had executed the warrant by arresting Turner was a member of this board. He abdicated his position upon the board to testify against Turner, and resumed his position upon the board for the purpose of voting the order of deportation. At this alleged trial Turner had no witnesses to testify in his behalf, and had no means or opportunity of procuring any witnesses. He had no counsel in his behalf, and the immigration act makes no provision for counsel. His trial was secret, as provided by the act. He was not asked to define the word "anarchy". No definition of

the word anarchy was submitted to him. He was not questioned as to his specific theory about government; nor did the fact that he was in the United States for the purpose of delivering lectures seem to weigh aught against the bald accusation that he was an anarchist —that is, that he disbelieved in government. There is no pretense made upon this record that Turner at any time ever advocated the assassination of any of the officials of this or any other government; or that he believed in or advocated the overthrow by force or violence of the government of the United States, or of all government, or of all forms of law. The whole fact in the case is that Turner himself, or his friends had, emphasized in the literature which was circulated advertising his lecture, the information that Turner had refused to accept the candidacy to parliament because of his anarchistic principles and his disinclination to participate in the aggression of government. These facts and Turner's declaration of his philosophy at the meeting in question constituted the body of the government's case.

An appeal having been taken to the Secretary of Commerce and Labor from the order of deportation of the Board of Special Inquiry, the Secretary of Commerce and Labor in dismissing the appeal said that Turner had admitted that he is "an anarchist and an advocate of anarchistic principles which bring him within the class defined by Section 38, of the act approved March 3rd, 1903." The dismissing of this appeal resulted in the suing out of a writ of habeas corpus in the Circuit Court of the United States for the Southern District of New York, where the Act of March 3rd, 1903, was held constitutional, and Turner

was remanded to the custody of the immigration officers. An appeal to this court from the Circuit Court raises the constitutionality of that act.

For the convenience of the court it has been deemed proper to insert the following historical reference to the various immigration acts passed since the beginning of the government.

HISTORICAL VIEW OF IMMIGRATION ACTS.

Scope of Acts:—The growth of the alien act in this country is interesting in two respects, first the enlargement of the act in its general scope and intendment and its increased restrictive and prohibitive features. Secondly, the gradual growth of the Immigration Department and its assumption of judicial power.

Discussing the first proposition, we find that passing the Alien and Sedition Act the first attempt at the regulation of immigration by Congress was the Act of June 18, 1798, and this act was entitled "An Act to Establish a Uniform Rule on Naturalization and to Repeal the Act Heretofore Passed on that Subject." The original act referred to, and which was repealed
[Act of 1795] by this act, was the act of January 29th, 1795. The act of January 29th, 1795, was known as the "Naturalization Act" and contained no provisions in regard to aliens, other than their right to become naturalized citizens of the United States after a residence of sufficient length of time in this country. (U. S. Stat. at
[Act of 1798] Large, Vol. 1, p. 414.) The act of June 18, 1798, was broader in its scope, and provided that aliens coming into this country should register and report to the Clerk of the District Court in the district in which

said alien entered this country, and in the absence of any District Clerk within a radius of ten miles from said port of entry then said alien was to report to the Collector of said port or place, or some other person nearest thereto, authorized by the President of the United States to register aliens. (U. S. Stat. at Large, Vol. 1, p. 566.) It was also provided that the clerk or officer receiving the report of the said alien should keep a book showing such registry. And a further provision was made by the act that each alien who registered should pay 50 cents to the clerk, or person, making the registration. There was no limitation in this act in regard to qualifications of entry and no classes were eliminated or prohibited from entering under and by virtue of this act.

[Act of 1799] On February 25, 1799, Congress passed its first quarantine and health act. This act contained nothing relating to the admission of aliens other than the right of the government to quarantine and inspect vessels and passengers and hold them in quarantine until such time as they might be permitted to land, or to prevent landing entirely if it seemed proper to the proper officials. (U. S. Stat. at Large, Vol. 1, p. 619.)

[Act of 1864] On the 4th of July, 1864, Congress passed another act appointing a commissioner of immigration, to be subject to the control of the *Department of State*. This act contained a provision that any alien coming into this country should be admitted regardless of the fact that said alien was under contract of labor to some person in this country, provided that such contract for services and labor did not exceed a period

of 12 months, and provided that all such contracts should be valid and binding. (U. S. Stat. at Large, Vol. 13, p. 385.) This act was subsequently repealed by the act of February 26, 1885, which provided that no alien should be allowed to come into this country who was under contract to perform labor or render service in this country.

[Act of 1875] On March 5, 1875, an act supplementary to the acts in relation to immigration, was passed to prevent the importation of women into the United States for the purpose of prostitution. This act provided that it should be unlawful for aliens undergoing sentence for conviction in their own country of felonious crimes, other than political, or growing out of or the result of such political offenses, or whose sentence had been remitted on condition of their emigration and women imported for the purpose of prostitution, to enter the United States. (Com. Stat. 1901, p. 1286.)

[Act of 1882] On the 3rd of August, 1882, Congress passed an act which provided that the proper officers whose duty it was to examine into the condition of passengers arriving at the ports, had the right to go on board and examine vessels, and if, on such examination, there should be found among such passengers, any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge, they should report the same in writing to the collector of such port, and such person should not be permitted to land. This act provided further that all foreign convicts, except those convicted of political offenses, should be sent back to the nations to which they be-

longed and from whence they came. (Comp. Stat. 1901, p. 1288 *et seq.*)

[Act of 1885] On February 26th, 1885, Congress passed the act already referred to providing that all persons bringing or importing aliens into this country under contracts for their services in labor should be guilty of a misdemeanor, excepting persons brought as private secretaries, or domestics, or skilled labor for purposes that could not be otherwise obtained; nor actors, artists, lecturers or singers, etc., are not to be included within the meaning of this act, and that any such contract shall be utterly void. And the act provided further that any person, or master, or owner, who knowingly permits an alien under such contract to land, shall be liable to a fine and imprisonment. This act, however, does not contain any provision prohibiting the alien himself from landing, but is in effect that any person procuring his coming shall be liable criminally and that the contract shall be void. (Comp. Stat. 1901, p. 1290.)

[Act of 1887] On February 23, 1887, an amendment to this act was passed by Congress, which went further and provided that any person found upon the passenger list of any vessel entering any port of this country, who had come to this country under and by virtue of any contract of employment, should not be permitted to land. This amendment was evidently passed for the purpose of preventing the admission of aliens under contract of labor.

[Act of 1891] On March 3rd, 1891, Congress passed an act in the nature of an amendment to the various acts relating to immigration, which provided that the following

classes of aliens should be excluded from admission to the United States in accordance with existing acts relating to immigration, other than those concerning Chinese laborers, viz.: All idiots, insane persons, paupers, or persons likely to become a public charge, persons suffering from loathsome or dangerous contagious diseases, persons who have been convicted of a felony, or other infamous crime or misdemeanor involving moral turpitude, polygamists, and also any person whose ticket or passage is paid for with the money of another, or who is assisted to come, unless it should appear that such person does not belong to the excluded classes. A proviso in this act also states that nothing in this act shall be construed to apply to or exclude persons convicted of political offenses. Said political offenses may be designated as felony, crime, infamous crime or misdemeanor involving moral turpitude by the laws of the land from whence said person came, or by the court convicting. This act was an enlargement of the previous acts in that the class of aliens to be rejected included persons suffering from a loathsome or dangerous contagious disease and polygamists. The proviso in the act was evidently passed for the purpose of showing how strongly Congress felt against prohibiting persons from landing on account of their political beliefs, by going to the extent of expressly providing in the act that such persons should not be excluded notwithstanding they had been found guilty of a crime designated as a crime involving moral turpitude by the laws of the land whence they had come, provided such act was really an act of a political character. (Comp. Stat. 1901, p. 1224.)

[Act of 1893] In 1893, March 3rd, an act was passed to facilitate the enforcement of the immigration and contract labor laws of the United States. This act provides for the manner in which immigrants shall be listed for the purpose of facilitating the work of inspection and of the Immigrant Commissioners at the ports of landing. (Comp. Stat. 1901, p. 1300, *et seq.*)

[Act of 1903] March 3rd, 1903, Congress passed another act which is the final and last act on the immigration question in this country, and under section 2 of this act it is provided that the following classes of aliens shall be excluded from admission into the United States, viz.: All idiots, insane persons, epileptics, any person who has been insane within 5 years previous, persons who have had two or more attacks of insanity at any time previously, paupers, persons likely to become a public charge, professional beggars, persons afflicted with a loathsome or contagious dangerous disease, persons who have been convicted of felony or other crime or misdemeanor involving moral turpitude, polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence of the government of the United States or other governments, or of all forms of law, or the assassination of public officers, prostitutes and persons who procured or attempted to bring in women for the purpose of prostitution; those who have been within one year from the date of the application for admission to the United States deported as being under offers, solicitations, promises or agreements to perform labor or services of some kind therein, and also any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless

it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes; provided that nothing in this act shall exclude persons convicted of an offense purely political not involving moral turpitude. (Comp. Stat. Large, 1903, p. 166, *et seq.*)

There are some further provisos in this act showing the class of persons that can be brought into this country under contracts of labor.

It is interesting to note the increased number of classes in this act who are excluded from admission to the United States. The new classes are epileptics, persons who have been insane within five years previous, persons who have had two or more attacks of insanity at any time previously, professional beggars, anarchists, persons who believe in or advocate the overthrow by violence or force of the government of the United States, or of all governments, or of all forms of law, or the assassination of public officials; or of those persons who within one year from date of application for admission to the United States were deported as being under offers, or agreements to perform labor or services of some kind thereon.

It is also interesting to note that the proviso in this act is not nearly as strong in setting forth the fact that persons should not be excluded because of offenses purely political as was the proviso of Congress in the act of March 3, 1893.

Growth of Judicial Power.—The second feature of the attitude of this country towards aliens and the development of the alien act, is the gradual growth

of the Immigration Department and its assumption of judicial power.

[Act of 1798] In the original act of Congress passed June 18, 1798, no provision was made for an immigration department, but that act provided that all aliens, foreign ministers, etc., excepted, who should arrive at any port within the territory of the United States, should report to the Clerk of the District Court of that district, if living within ten miles of the port, otherwise to the Collector of such port or place or some other person nearest thereto authorized by the President of the United States, to register aliens. Such report was to be made within five months after passing of this act, or within 48 hours after the first arrival or coming into the territory of the United States of the alien. And this report should state the sex, place of birth, condition or occupation and place of intended residence within the United States, and by whom the report was made. It was also provided that aliens refusing to make such report should forfeit the sum of $2, which could be collected by any person upon complaint before a Justice of the Peace, or proper officer.

This act hereinabove set forth, contained other sections in regard to the naturalization of persons who had been admitted to the United States. This act was supplanted by the act of April 14, 1802, which act, however, related entirely to the naturalization of aliens and contained no provision regarding their entry and their duty upon entering this country, so that there is considerable question as to whether the act of 1802 repealed sections of the act of 1798 relating

to the registration of aliens before the Clerk of the District Court or other officer.

[Act of 1864] On July 4, 1864, Congress passed an act authorizing the President of the United States, with the consent of the Senate, to appoint a commissioner of immigration, which said commissioner of immigration was subject to the direction and control of the *Department of State*. This commissioner also had the power to appoint not more than three clerks, who were also subject to the Department of State, and the act further provided that a superintendent of immigration should be appointed, who should be stationed at New York, and should be known as the Superintendent of Immigration of New York, and who should also be under the control and direction of the department.

[Act of 1875] On March 3rd, 1875, Congress passed an act which provided that every vessel arriving in the United States may be inspected under the direction of the Collector of the Port at which it arrives if he shall have reason to believe that any such obnoxious persons (as enumerated in the act) shall be on board, and that it was unlawful for any aliens to land in the United States *except in obedience to judicial process issued pursuant to law*. The act further provides that if any person should feel aggrieved by the certificate of such inspecting officer stating that he was among the class forbidden to land, then he should apply for release or other remedy to *any proper court or judge*, and that it would be the duty of the collector of the port to detain the vessel until a hearing and determination of the matter was had.

[Act of 1882] Upon the 3rd of August, 1882, an act was passed providing that each alien coming into this country should pay to the Collector of Customs of the port 50 cents per head and the money thus paid should be turned over to the United States Treasury, which should constitute a fund to defray the expense of regulating immigration.

Section 2 of the act provides that *the Secretary of the Treasury* shall be charged with the duty of executing the duties and provisions of the act and with supervision over the business of immigration to the United States, and for that purpose had the power to enter into contracts with such state commission, board or officers as might be designated by the governor of said state to take charge of the local affairs of immigration within the ports of the state. And such officers or commissioners were authorized to go on board or through any vessel or ship, and to refuse to permit persons to land provided they were excepted by the laws of the United States.

The act further provided that the Secretary of the Treasury should establish regulations and rules not inconsistent with law, for the purpose of carrying out the provisions of the act. This act eventually divested the Department of State of its power to regulate immigration and placed the power in the Department of the Secretary of the Treasury, where it has remained under the various acts of Congress since then with, however, increased power in the Department of the Secretary of the Treasury.

[Act of 1887] On the 23rd of February, 1887, another act was passed by Congress in the nature of an amendatory

act to the act approved February 26, 1885, which we have not commented upon, in that no provision was made in that act as to who should have charge of the emigrants under that act, and the amendatory act evidently was passed to supply this deficiency. This amendment provides that the *Secretary of the Treasury* should be charged with the duty of executing the provisions of the act, and should have power to enter into contracts with such state commission, board or officers as might be designated for that purpose by the governor of such state, who should take charge of the local affairs of immigration in the ports within said state. And it further provided that the Secretary of the Treasury should establish rules and regulations, etc.

[Act of 1891] On March 3rd, 1891, Congress passed an act in amendment to all acts relative to immigration, and section 7 thereof established the office of superintendent of immigration and granted to the President by and with the consent and advice of the Senate, the power to appoint such officer. The said superintendent of immigration to be an officer in the *Treasury Department* under the control and supervision of the Secretary of the Treasury to whom he should make annual reports. He to have a chief clerk and two first-class clerks. The inspection officers and their assistants to have the power to administer oaths and take and consider testimony touching the right of such aliens to enter the United States, *all of which should be entered of record.* All decisions made by inspection officers or their assistants touching the right of any alien to land when adverse to such right to be final, unless an appeal be taken to the Superin-

tendent of Immigration whose action shall be subject to the review of the Secretary of the Treasury.

Section 9 of this act provides that for the preservation of the peace, and in order that arrests may be made for crimes under the laws of the state where the immigration stations were located, officers in charge of such stations as occasion may require, should admit therein the proper state and municipal officers charged with the enforcement of such laws, and for the purposes of this section *the jurisdiction of such officers and of the local courts shall extend over such stations.*

Section 13, provided that the Circuit Court and District Courts of the United States were invested with full and concurrent jurisdiction of all causes civil and criminal arising under any of the provisions of this act.

[Act of 1893] The act of March 3rd, 1893, provided that it should be the duty of every inspector of arriving immigrants to detain for further inquiry, every person who may not appear to him to be *clearly and beyond doubt entitled to admission.* All special inquiries to be conducted by not less than four officers acting as inspectors, to be designated in writing by the *Secretary of the Treasury,* or the Superintendent of Immigration. No immigrant to be admitted except after favorable decision made by at least three of said inspectors, and any decision subject to appeal by any dissenting inspector whose action shall be subject to review by the Secretary of the Treasury.

It will be observed that in the beginning no restrictions were placed upon the entrance of aliens to this

country and only a formal registration required of them at the office of the Clerk of the District Court. That thereupon side by side with the restriction of immigration into this country the department that has grown up first commenced in the *Department of State* providing for certain inspectors and officials, and then under the department of the *Secretary of the Treasury* the inspection became more rigid, until in the act of 1893 we find that no person should be entitled to admission to this country unless he is able to show clearly and beyond doubt that he is entitled to admission, and does not belong to any of the classes restricted by the Immigration Laws of this country. We also find courts of special inquiry growing up in this department whose decisions are final and from whom appeal can be taken only to the Superintendent of Immigration and from him to the Secretary of the Treasury. In order to clothe this department with more power and pomp on the 2nd of March, 1895, Congress passed an act providing that the Superintendent of Immigration should thereafter be designated as *Commissioner General of Immigration.*

[Act of 1903] On the 3rd of March, 1903, Congress passed its last act relating to immigration of aliens into the United States. This act provides a penalty which may be sued for and recovered by the United States, or any person in their name, against persons bringing women into the country for the purposes of prostitution, or aliens under contracts for services of labor, and providing that it should be the duty of the District Attorney of the proper district to prosecute every such suit when brought by the United States. And pro-

viding further that persons guilty of the offense shall be subject to fine and imprisonment.

Section 10 of this act provides that the decision of the Board of Special Inquiry (hereinafter provided for) based upon the certificate of the examining medical officer shall be final as to the rejection of aliens afflicted with contagious diseases or mental or physical disability.

The act further provides that the sailing master shall furnish a list stating the name of the aliens, the age and sex, etc., whether a polygamist, and whether an anarchist, etc., and upon failure is liable to pay $10 to the Clerk of the Port upon arrival.

Section 16 provides that upon receipt of this list by the immigration officers it shall be their duty to go or send assistants to the vessel and inspect all aliens, or may order a temporary removal of such aliens to the place designated for examination. Such removal not to be considered a landing.

The act further provides, Section 19, that all aliens brought into this country in violation of law shall immediately be sent back to the countries from whence they came on the vessel bringing them if practicable; it is provided the Commissioner General of Immigration with full approval of the Secretary of the Treasury may suspend the deportation of any alien if their testimony is necessary on behalf of the United States government in the prosecution of offenders.

Section 21 provides that the Secretary of the Treasury may within a period of *three years* after landing or entry of *an alien,* take him into custody and return

him to the country whence he came, if he is found to have landed in violation of this act; and provides further that the Commissioner General, in addition to such other duties as may by law be assigned to him, shall under the direction of the Secretary of the Treasury have charge of the administration of all laws relating to the immigration of aliens, and shall have the control and direction of all officers, clerks appointed thereunder, and shall establish rules and regulations and prescribe such forms of bonds and other papers not inconsistent with law, as he may deem best calculated to carry out this act.

Section 23 provided that the duties of the Commissioner of Immigration shall be of an administrative character, to be prescribed in detail by regulations prepared under the direction and with the approval of the Secretary of the Treasury.

In this connection it would seem that the duties of the Commissioner General would appear to be more of a judicial than of an administrative character, or that they have at least stretched the administrative power so as to infringe upon the powers of the judiciary of the United States.

The immigration officers also have power under this act to administer oaths and take and consider testimony touching the right of any alien to enter the United States, and where such occasion may be necessary, to make a written record of such testimony. The decision of any officer favorable to the admission of any alien shall be subject to challenge by any other immigration officer, and such challenge shall operate to take the alien so challenged before the Board of

Special Inquiry for its investigation. And every alien who does not appear to the examining inspector at the port of arrival to be *clearly and beyond doubt* entitled to land shall be detained for examination by the Special Board of Inquiry.

Said board shall consist of three members selected from the immigration officials. Such board has authority to determine whether an alien shall be allowed to land *and all hearings before said board to be kept separate and apart from the public.* Said board to keep a complete permanent record of their proceedings, and all testimony produced before them. The decision of any two members of the board to be final, but either the alien or any dissenting member may appeal to the Secretary of the Treasury, whose decision shall then be final.

Section 26 of this act provides that *no bond or guarantee written or oral* that any alien shall not be a public charge shall be received unless authority shall be given by the Commissioner General, with the written approval of the Secretary of State.

Section 29 provides that the Circuit Court and the District Courts of the United States are invested with full and concurrent jurisdiction of all causes civil and criminal arising under any of the provisions of this act.

Section 31 provides that state officers may arrest for crimes under the laws of the state, upon admission by the officers in charge of the station.

And also provides that any person who shall assist any prohibited alien to enter the territory of the United States, or who connives or conspires with any

person to allow or permit any such person to enter, shall be fined not more than $5,000 or imprisoned for not less than one nor more than five years, or both.

The act of 1903 has built up a court under the direction of the Secretary of the Treasury and head of the Commissioner General of Immigration, which seems to have all the power within its jurisdiction of any court of record in the United States rightfully upon any judicial act, with the power to exclude where it does not appear clear and beyond a reasonable doubt that any alien is entitled to admission, setting the burden on the aliens without the aid of a jury trial, and extending the immigration law so as to make any person attempting to help any friend become a citizen of this country liable to an enormous fine or imprisonment in the penitentiary, to the extent of five years.

SPECIFICATION OF ERRORS.

Sixteen assignments of error have been made upon this record. Consolidating these into fundamental subjects as they bear upon the alleged conflict between the Constitution and the law of March 3rd, 1903, they may be outlined as follows:

First: Section 38 of the act of March 3rd, 1903, abridges the freedom of speech and of the press, in that it excludes from admission to the United States any person who disbelieves in or who is opposed to all organized government, and is unconstitutional and void because in contravention of the first amendment to the Constitution which declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Second: Sections 10, 19, 21, 22, 24, 25 are unconstitutional and void because they transfer judicial power to the executive branch of the federal government, whereas Section 1 of Article III of the Constitution declares that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Third: The same sections are unconstitutional and void upon the additional grounds that they are repugnant to those provisions of the Constitution which declare that no person shall be deprived of liberty

without due process of law; "that in all criminal prosecutions the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel for his defense," that "no warrants shall issue but upon probable cause, supported by oath or affirmation;" and that no one in any criminal case shall be compelled to be a witness against himself.

Fourth: No power whatever is delegated by the Constitution to the general government over alien friends with reference to their admission into the United States, or otherwise, or over the beliefs of citizens, denizens, sojourners or alien immigrants, or over the freedom of speech or of the press, whilst the tenth amendment to the Constitution expressly declares that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people."

ARGUMENT.

I.

Section 38 of the Act of March 3rd, 1903, abridges the freedom of speech and of the press in that it excludes from admission to the United States any person who disbelieves in or who is opposed to all organized Government, and is unconstitutional and void because in contravention of the First Amendment of the Constitution which declares that "Congress shall make no law respecting the establishment of religion or prohibit a free expression thereof, or abridge the freedom of speech or the press."

Under section 38 "no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government * * * shall be permitted to enter the United States or any territory or place subject to the jurisdiction thereof." (U. S. Compiled Statutes Sup. 1903, p. 186.)

The words "no person" means, of course, all persons, whether immigrants, or those who seek to enter the United States for business or other reasons. As before mentioned the last clause of this section imposes a penalty of a heavy fine and long imprisonment upon any one who knowingly aids or assists or con-

nives or conspires with any person to induce any such proscribed person to enter the United States. If this enactment be law, and President Harper of the University of Chicago should again invite and procure Count Tolstoi to come to the United States to deliver lectures at the University, the former would be subject to fine and imprisonment and the latter would be amenable to the United States constabulary and its orders of deportation. Prince Kropotkin, one of the sovereign intellects of this age, Emile Réclus, the distinguished geographer, and many others are debarred from these shores. Turks, Greeks, Italians, Russians, the abject spawn of centuries of oppression, if free from disease and possessed of but one wife or none, are free to flock to these shores. These believe in government. Nay, to them government is a mystical necessity without whose existence life would be impossible. But of self-government few of them have any idea. The stupidity of the law cannot be better understood than by thus contrasting what it permits with what it prohibits.

When the present act was before the Senate, one of the clauses relating to the classes of persons to be excluded read as follows:

> "Polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence *of any government*, of the government of the United States, or of all government." (See Cong. Rec., Vol. 36, Pt. 1, p. 143.)

Upon this clause Mr. Hoar said:

> Mr. Hoar: "If the Senator will allow me to

call his attention to it, he certainly, I think, on reflection will not wish to retain the words 'of any government' because there are governments in the world that ought to be overthrown by force or violence. What does the senator say as to the government of the Moros at this moment?"

MR. MCCOMAS: "I think that that remote insular proposition need not be interpolated in a definition of the propagandist of anarchy by violence."

MR. HOAR: "I do not know that I as a member of the Senate of the United States want to particularize all the governments; we may be on very friendly relations with them; *but there are governments in this world that I, for one, would overthrow by force and violence very quickly if I could.*"

Cong. Rec., Vol. 36, Pt. 1, p. 144.

These remarks of Mr. Hoar were unmistakably suggested by the Declaration of Independence as a document of revolution and the history of the Anglo-Saxon races, which has been marked by repeated revolutions.

Hence the act, as passed, dropped from the excluded classes those "who believe in or *advocated the overthrow by force of violence of any government.*" And as Section 2 now reads (Sup. 1903, p. 172) those are excluded who "believe in or advocate the overthrow by force or violence of the government of the United States or of all government, or of all forms of law." But if Senator Hoar's dictum be true might not all governments be rightfully overthrown by force and violence if all were of the kind which he had in

mind. In this view the only difference between Senator Hoar and the persons proscribed by this law would be a difference of opinion as to whether all or some only of the governments of the world belonged to the class which he would overthrow by force and violence if he could. This philosophy does not necessarily imply the erection of new governments in place of the old. Progress might dictate anarchism; and this would be not less revolutionary than the step from despotism to democracy. Section 2, therefore, excludes two divisions of people (1) those who entertain a given belief touching the government of the United States in the concrete, or who advocate this belief; and (2) those who entertain a given belief as to all governments or forms of law abstractly considered, or who advocate such belief. Section 38 goes a step further. It excludes those who disbelieve in, or are opposed to all organized government, whether they believe in the overthrow of all government by force or violence or not. Such people are debarred from these shores under Section 38 even if they disbelieve in all organized government. So even if the belief in or advocacy of the overthrow of all government by force is proscribed though they believe in or advocate the overthrow by force or violence of any particular government be permitted, why should the overthrow of all government by thought be proscribed. For governments may be overthrown by thought as well as by force. All organized government might be overthrown in the process of time by reason alone. And if so is any enactment law which prohibits the operation of such a revolution? So far as this is concerned the government of "The United

States of America" under the Articles of Confederation was dissolved without the shedding of a drop of blood. It is the boast of historians that Hamilton, Jay and Madison in the Articles which were afterwards published under the title of the "Federalists" persuaded the states under the confederation to withdraw therefrom and to adopt the present Constitution. A new government was thereby formed. The Declaration of Independence announces it as a self-evident truth that the people have the right to abolish old governments and to institute new ones. And yet this act of 1903 seeks to inhibit beliefs in or advocacies of the overthrow of the government of the United States. If it be a right to abolish old governments and to institute new ones; the means of such abolition cannot be absolutely wrong when the abolition itself may be justified. And hence the necessity for liberty of belief and speech upon this subject.

This is not the place to enter upon a discussion of the right of revolution or the subsidiary right of advocating revolution. But if revolution be right, as the Anglo-Saxon races have ever claimed it to be, and if that right may be attained by advocacy, the question is whether the abolition of a given government and the abolition of all government differ except in degree. Do not despotisms give way to constitutional monarchies, and these in turn to republics or democracies? And how have these changes come to pass? Mr. Lincoln used the following language in Congress, in 1848:

> "Any people anywhere, being inclined and having the power, have the right to rise up and shake

> off the existing government and form a new one that suits them better. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion of such people that can, may revolutionize."

To call a given course of action a right but to make it depend for its rightfulness upon an efficient number of people favoring it is nothing less than a pure paradox. Was the American revolution less right at the beginning when its efforts were feeble and attended with failure than when they were powerful and crowned with success? Was there a gradual development of right proportionate to success? Or was the abolition of foreign rule right *per se* at the beginning? Was Magna Charta a valid charter because successfully wrested from King John, or was it a valid charter in and of itself which its successful rejection by King John would not have made invalid? In the social state the assertion of rights will frequently be resisted even to the shedding of blood. Perhaps this is the reason that Mr. Lincoln made the right of revolution depend essentially upon the sufficiency of the force to effectuate it.

It is evident that revolution is not right because attempted or wrong because repulsed. The further pursuit of the subject leads to remote philosophies which do not essentially touch the question in hand. As, for instance, whether the abolition of a government which is not destructive of liberty and the pursuit of happiness is a right; whether, again, a few might successfully destroy all government. We contend for no more than that these

subjects shall not be prejudged. For to prejudge them is to assume that what is now established, is the only right and that is the very thing to be proven which opponents ask shall be left open for debate. Force is force whether used by an army of conquest or by a band of desperate malcontents. The real issue is settled always in the forum of reason. Thinkers like Sir Thomas More, Shelley, Emerson, Spencer, Kropotkin and others will cling to reason as the most legitimate power of progress against reactionaries who slaughter in the name of popular symbols. They are willing to admit that the abolition of government is not right, simply because they advocate such abolition; but they insist that such abolition is not wrong because its advocacy is proscribed. So far as this is concerned anarchy would not be made right because, or even if all peoples acquiesced therein. The Century Dictionary defines anarchism as the "absence of government as a political ideal." Mr. Tucker, Proudhon's most competent exponent in America and the translator of Proudhon's "What is Property", defines anarchism "as the belief in the greatest amount of liberty compatible with equality of liberty, or in other words, as the belief in every liberty except the liberty to invade." Are these doctrines sound? If not, are they exploded by ringing the changes upon the "necessity for government," when anarchism raises the issue of government's necessity and asks leave to demonstrate that government is useless as well as wrong? The step from sovereignty inhering in a divine appointee to sovereignty inhering in the people is not greater than the step from sovereignty inhering in the people to sovereignty inhering in the individual.

The late distinguished and world-lamented Prof. Thomas H. Huxley, in his volume of essays entitled "Method and Results," published by D. J. Appleton & Co., New York, in 1896, in the essay on "Government: Anarchy or Regimentation," at page 391 gives the following definition of anarchy:

> "Anarchy, as a term of political philosophy, must be taken only in its proper sense, which has nothing to do with disorder or with crime, but denotes a state of society in which the rule of each individual by himself is the only government the legitimacy of which is recognized.
>
> Anarchy, thus defined, is the logical outcome of that form of political theory which for the last half century and more has been known under the name of individualism."

So then, if bad government may be abolished and good ones instituted, may not good ones be abolished and voluntary social relations established? Whether governments are bad or good, whether an ideal state of society is possible wherein there shall be no government, are not subjects to be closed by administrative processes and force. If such means are to be used to prevent their discussion, how puerile it is to object when force is used to make their discussion possible. They are poor readers of history who execrate the persecutions of the past, but do as their fathers did before them, under the belief that "the situation is different."

While no one is excluded under the law of 1903, who believes in or advocates the overthrow by force or violence of some particular government,—say that

of France, England or Russia, those are excluded who "believe in or advocate the overthrow by force or violence of the government of the United States." Can a single constitutional, not to say philosophic, reason be advanced why the United States are singled out as exempt from overthrow? Senator Hoar very plainly stated that there are governments which he for one would overthrow by force and violence if he could. He doubtless thought they deserved to be overthrown. But may not the United States deserve to be overthrown? Does not the inhibition upon advocating the overthrow by force and violence of the United States imply that they do not deserve to be overthrown? Their unimpeachable merits are settled by this act of Congress, in the very face of the Declaration of Independence which declares it to be the right of a people to alter or abolish old governments and "institute new governments, laying its foundation on such principles and organizing its powers in such form as shall seem most likely to effect their safety and happiness." The Declaration of Independence has been held by this court to be the spirit of the Constitution itself. The clause in question is none the less unconstitutional because directed against the advocacy of violent overthrow only while leaving peaceful overthrow undisturbed by its terms. The remarks of Mr. Lincoln upon the right of revolution contemplate force; and not only that, but force as the complement of right itself.

The Declaration of Independence was an advocacy of force against the British crown, then the lawfully established government of the land and against this our fathers pledged their lives and sacred honor. It

held the subjects of that crown "Enemies in War in Peace friends." Its promulgation was followed by force which resulted in the institution of a new government, organized upon principles which seemed to our fathers to be appropriate to their liberty; but which these same fathers foresaw might some time be outgrown. And so if persons may be admitted to these shores who "believe in or advocate the overthrow by force or violence" of the government of England, for instance, upon what constitutional or philosophic ground can those persons be excluded "who believe in or advocate the overthrow by force or violence of the government of the United States"? Upon what hypothesis is it held that the question of violent overthrow of the government of England or any other foreign government is debatable and not closed, that belief in or advocacy of such overthrow is tolerable; whilst the violent overthrow of the government of the United States is an evil beyond question and the results of such overthrow evils beyond question?

Passing from these prefatory remarks it may be doubted whether Section 2 applies to the appellant. It can only apply to him by considering the words "anarchists" therein as descriptive of a distinct class. But if the words which follow the word "anarchists" be viewed as describing that word then the section does not apply to the appellant and he would be entitled to his discharge under the ruling in *Gonzales* v. *Williams,* (24 S. C. Rep. Ad. sheets, Feb. 1, 1904):

> "And in the present case, as Gonzales did not come within the Act of 1891, the Commissioner

had no jurisdiction to detain and deport her by deciding the mere question of law to the contrary; and she was not obliged to resort to the Superintendent or the Secretary."

Definitions of the word anarchist and anarchism have already been given. Section 2, though, says "anarchists or persons who believe in or advocate the overthrow by force or violence of the government of the United States, or of all governments or of all forms of law, or the assassination of public officials."

Anarchists are not distinguished by their beliefs in or advocacy of the overthrown by force or violence of the government of the United States or of all government or of the assassination of public officials.

Anarchists are distinguished by a definite creed and not by the *means* proposed to propagate the creed or render it paramount. If, though, the words after the disjunctive "or" are descriptive of the word "anarchists" then the appellant does not fall under Section 2. If the word "anarchist" is used in the sense defined by lexicographers then we are brought to a question of pure belief or mental condition such as is expressed in Section 38, which reads "that no person who disbelieves in or who is opposed to all organized government, etc., shall be permitted to enter the United States."

The first amendment to the Constitution prohibits Congress from passing any law abridging the freedom of speech or of the press. This amendment with nine others were proposed to the first Congress and went into effect November 3, 1791. These amendments constitute a Bill of Rights from which Hamilton origin-

ally dissented in the 84th number of the Federalist, as unnecessary because Congress could make no law except it be empowered to do so by a provision in the grant itself, that is the Constitution. But out of a zealous care for future safety, several of the states, when ratifying the Constitution, required these amendments to be made. There is not a line of the Constitution giving Congress power over the admission of alien friends; nor is there a line upon the subject of aliens except the power "to establish an uniform rule of naturalization", but the first amendment says that "Congress shall make *no* law respecting an establishment of religion or prohibiting the free exercise thereof, or the freedom of speech or of the press." This limitation upon Congress is absolute and complete. It does not say that Congress shall make no law upon these subjects as to the United States or their citizens as to particular territory or persons, or under particular circumstances. Congress was given no power under the Constitution anyway to pass such legislation. But this amendment puts it beyond the realm of reason to deduce from any incident of sovereignty granted an implied power to legislate upon the subject of religion or to abridge the freedom of speech or of the press in any manner whatever. There cannot be the slightest doubt about this in the mind of any one who can perceive an axiom.

The first amendment is on the same basis as certain prohibitory sections in the body of the constitution. "No bill of attainder or ex post facto law shall be passed." "No capitation or other direct tax shall be laid" except as specified. "No tax or duty shall be laid on articles exported from any state." "No

title of nobility shall be granted by the United States." In *Pollock* v. *Farmers' Loan & Trust Company*, 157 U. S. 427, this court held, speaking through Mr. Chief Justice Fuller, that a federal law taxing the rents of land and the income of bonds was invalid because Congress was powerless to levy capitation or other direct tax except in proportion to the enumerations provided in the constitution. In *Downes* v. *Bidwell*, 182 U. S. 244, the court, speaking through Mr. Justice Brown, said: "Thus when the constitution declares that 'no bill of attainder or *ex post facto* law shall be passed' and that no title of nobility shall be granted by the United States it goes to the competency of Congress to pass a bill of that description. Perhaps the same remark may apply to the first amendment that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, etc.'"

The question then is do Sections 2 and 38 of the law of 1903 prohibit the free exercise of religion or abridge the freedom of speech or of the press? If they do, it is unimportant that the prohibition and the abridgment affect aliens only. The *subject* of the prohibition or the abridgment is of no moment, if Congress be incompetent to pass *any* such law. If a certain class of people cannot be excluded from these shores except by prohibiting the free exercise of religion or abridging the freedom of speech or of the press, then they cannot be excluded at all. When no express power to Congress over the admission of aliens has been granted it partakes of the grotesque to urge a mode of regulating their admission which

flatly incurs a constitutional prohibition upon Congress to interfere with the free exercise of religion or to abridge the freedom of speech or of the press. It is a well known fact that Tolstoi and his followers are Christian anarchists. They refuse, as the appellant in this case refuses, to participate in what they call "the aggression of government." Government to them implies aggression, and they abstain from taking any part in it. The Dukobors and Menonites belong to the same school. They are off-shoots of the Quakers of an earlier day. These peoples may seem freakish and dangerous to the man who prides himself on his common sense. But the Puritans, the Quakers, the Methodists and other cults appeared not less freakish and dangerous to the first estate of their day. In 6 How. State Trials, 951, a report is given of the trial of William Penn on a charge of *"preaching and speaking."* Penn demanded to know upon what law he was tried, and the court said the trial was upon the common law:

> "PENN: Where is the common law?
>
> RECORDER: You must not think I am able to run up so many years and over so many adjudged cases, which we call common law to answer your curiosity.
>
> PENN: If it be common, it should not be so hard to produce."

The jury refused three times to return a verdict of guilty, although instructed by the court to do so. Upon being sent out the fourth time they found a verdict of not guilty, for which the court adjudged them in contempt. What then would be the funda-

mental difference between refusing to admit Christian anarchists into this country, and prosecuting them for preaching Christian anarchy after they arrived? Turn it whichever way one may the law of 1903 is a recrudescence of that sanguinary spirit of the past concerning whose machinations no one can read without astonishment and indignation. Puritanism and Quakerism are not live questions now. Does it prove that freedom of religion and of speech are secure because these doctrines may be preached? The world spirit is changing its form continually; the human mind is unfolding. New problems are arising. New theories are developing. We insist that the time has come when new "Utopias" may be written and expounded and that their authors shall not be hunted and caged like beasts. Congress has no power under the pretense of regulating immigration to lay the hand of oppression upon thought and expression. The spirits who deserve to rule this world, and who in spite of all reactions will ever rule it are those of Milton, More, Goethe, Kant, Locke, Spencer and their kindred.

But it may be said that the law of 1903 does not prohibit the free exercise of religion, or abridge the freedom of speech or of the press, because it only excludes those who disbelieve in organized government.

It may be said that Turner is to be deported not because he announced that he was an anarchist, not because it was desired to prevent his lecturing upon anarchy, but because he is in fact an anarchist. In other words, the law is not concerned with what Tur-

ner says. He may lecture as much as he pleases upon anarchy, because Congress cannot restrain his speech. Congress can pass "no law * * * abridging the freedom of speech or of the press." But Congress has the right to regulate Turner's beliefs upon the subject of government. The "United States are sovereign" and can prescribe what opinions people shall entertain; but one of the limitations on their sovereignty prevents Congress from abridging the freedom of speech, and therefore while opinions may be regulated speech may not. This must be the contention, for the law does proscribe a certain "disbelief." If the proscription of a disbelief is a different thing from proscribing or abridging speech then we can better appeal to the constitution as a whole than to the first amendment to the constitution. But if the proscription of a "disbelief" is the same thing as abridging the freedom of speech or of the press then this law is null and void. Mr. Herbert Spencer in his work on the "Principles of Ethics, Vol. II, p. 136, uses this language in demonstrating that freedom of belief is merely freedom of speech; and to this we appeal as one of the unanswerable proofs that freedom of belief and of speech are identical:

"If we interpret the meaning of words literally, to assert freedom of belief as a right is absurd; since by no external power can this be taken away. Indeed an assertion of it involves a double absurdity; for while belief cannot really be destroyed or changed by coercion from without, it cannot really be destroyed or changed by coercion from within. If it is determined by causes which lie beyond external control, and in large measure beyond internal control. What

is meant is, of course, the right freely to *profess* belief.

"That this is a corollary from the law of equal freedom scarcely needs saying. The profession of a belief by any one, does not of itself interfere with the professions of other beliefs by others; and others, if they impose on any one their professions of belief, manifestly assume more liberty of action than he assumes.

"In respect of these miscellaneous beliefs, which do not concern in any obvious way the maintenance of established institutions, freedom of belief is not called in question. Ignoring exceptions presented by some uncivilized societies, we may say that it is only those beliefs the profession of which seems at variance with the existing social order, which are interdicted. To be known as one who holds that the political system, or the social organization, is not what it ought to be, entails penalties in times and places where the militant type of organization is unqualified. But naturally, where fundamental rights are habitually disregarded, no regard for a right less conspicuously important is to be expected. The fact that the right of political dissent is denied where rights in general are denied, affords no reason for doubting that it is a direct deduction from the law of equal freedom.

* * *

"The subject matter of this chapter is scarcely separable from that of the last. As belief, considered in itself does not admit of being controlled by external power—as it is only the profession of belief which can be taken cognizance of by authority and permitted, or prevented, it follows that the assertion of the right to freedom of belief implies the right to

freedom of speech. Further, it implies the right to use speech for the propagation of belief; seeing that each of the propositions constituting an argument, or arguments, used to support or enforce a belief, being itself a belief, the right to express it is included with the right to express the belief to be justified."

"Of course the one right like the other is an immediate corollary from the law of equal freedom. By using speech, either for the expression of a belief or for the maintenance of a belief, no one prevents any other person from doing the like; unless, indeed by vociferation or persistence he prevents another from being heard, in which case he is habitually recognized as unfair, that is, as breaking the law of equal freedom."

* * *

"It is said that a government ought to guarantee its subjects 'security and a sense of security;' whence it is inferred that magistrates ought to keep ears open to the declamations of popular orators, and stop such as are calculated to create alarm. This inference, however, is met by the difficulty that since every considerable change, political or religious is, when first urged, dreaded by the majority, and thus diminishes their sense of security, the advocacy of it should be prevented. There were multitudes of people who suffered chronic alarm during the Reform Bill agitation: and had the prevention of that alarm been imperative, the implication is that the agitation ought to have been suppressed. So, too, great numbers who were moved by the terrible forecasts of The Standard and the melancholy wailings of The Herald, would fain have put down the free-trade propaganda; and

had it been requisite to maintain their sense of security they should have had their way. And similarly with removal of Catholic disabilities. Prophecies were rife of the return of papal persecutions with all their horrors. Hence the speaking and writing which brought about the change ought to have been forbidden, had the maintenance of a sense of security been held imperative.

"Evidently such proposals to limit the right of free speech, political or religious, can be defended only by making the tacit assumption that whatever political or religious beliefs are at the time established, are wholly true; and since this tacit assumption has throughout the past proved to be habitually erroneous, regard for experience may reasonably prevent us from assuming that the current beliefs are wholly true. We must recognize free speech as still being the agency by which error is to be dissipated, and cannot without papal assumption interdict it."

* * *

"By a parallel progress there has been established that right of free speech on political questions which in early days was denied. Among the Athenians in Solon's time death was inflicted for opposition to a certain established policy; and among the Romans the utterance of proscribed opinions was punished as treason. So, too, in England, centuries ago, political criticism, even of a moderate kind, brought severe penalties. Later times have witnessed, now greater liberty of speech and now greater control: the noticeable fact being that during the war-period brought on by the French Revolution, there was a retrograde

movement in respect of this right, as in respect of other rights. A judge, in 1808, declared that 'It was not to be permitted to any man to make the people dissatisfied with the government under which he lives.' But with the commencement of the long peace there began a decrease of the restraints on political speech, as of other restraints on freedom. Though Sir F. Burdett was imprisoned for condemning the inhuman acts of the troops, and Leigh Hunt for commenting on excessive flogging in the army; since that time there have practically disappeared all impediments to the public expression of political ideas. So long as he does not suggest the commission of crimes, each citizen is free to say what he pleases about any or all of our institutions: even to the advocacy of a form of government utterly different from that which exists, or the condemnation of all governments."

* * *

"And here, indeed, we see again how direct is the connection between international hostilities and the repression of individual freedom. For it is manifest that throughout civilization the repression of freedom of speech and freedom of publication, has been rigorous in proportion as militancy has been predominant; and that at the present time, in such contrasts as that between Russia and England, we still observe the relation."

The same principle is announced, though in different language, by Mr. Mill in his essay on "Liberty." He wrote:

"But there is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest; comprehending all that portion

of a person's life and conduct which affects only himself, or, if it also affects others, only with their free, voluntary, and undeceived consent and participation. When I say only himself, I mean directly, and in the first instance: for whatever affects himself, may affect others THROUGH himself; and the object which may be grounded on this contingency, will receive consideration in the sequel. This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it.

* * *

"No society in which these liberties are not on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist *absolute and unqualified.* The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily or mental, or spiritual. Mankind are greater gainers by suffering

each other to live as seems best to themselves than by compelling each to live as seems good to the rest."

* * *

Ernst Freund, professor of jurisprudence and public law in the University of Chicago, in his recent work on Police Power (Callaghan & Co.) touches upon the precise subject here, as follows:

"A proposition to forbid and punish the teaching or the propagation of the doctrine of anarchism, *i. e.*, the doctrine or belief that all established government is wrongful and pernicious and should be destroyed, is inconsistent with the freedom of speech and press, unless carefully confined to cases of solicitation of crime, which will be discussed presently. As the freedom of religion would have no meaning without the liberty of attacking all religion, so the freedom of political discussion is merely a phrase if it must stop short of questioning the fundamental ideas of politics, law and government. Otherwise every government is justified in drawing the line of free discussion at those principles or institutions, which it deems essential to its perpetuation,—a view to which the Russian government would subscribe. It is of the essence of political liberty that it may create disaffection or other inconvenience to the existing government, otherwise there would be no merit in tolerating it. This toleration, however, like all toleration, is based not upon generosity but on sound policy; on the consideration, namely, that ideas are not suppressed by suppressing their free and public discussion, and that such discussion alone can render them harmless and remove the cause for illegality by giving hope of their realization by lawful means." (P. 475.)

Congress could not pass a law providing that any alien who advocated the abolition of government should be exported. It could not do it, because the Constitution guarantees freedom of speech to citizen and alien alike. But while it must be admitted that Congress could not deport one for proclaiming a disbelief in government, it is contended that he can be deported because he disbelieves in it. There is no X-ray process for arriving at the convictions of the human mind, these convictions can only be ascertained by the utterance of the belief, to condemn the belief is really to condemn its utterance and can be nothing else. The Constitution says nothing about beliefs or disbeliefs, for it was assumed by the framers of the Constitution that freedom of speech comprehended freedom of belief. We depart into the fantastic when we say that a man can speak what he pleases, but cannot believe what he pleases. It amounts to saying that Congress cannot regulate speech, so that a person may speak what he believes, or if he be dishonest what he does not believe, but that the inner realm of the mind where beliefs or disbeliefs exist are subject to congressional regulations. For what benefit is it to the Wolseys and Lauds of this day if they cannot prevent the speaking of those beliefs which they may repress. To be able to repress beliefs but not to prevent their utterance is an empty power, and one which never could suit the sponsors of this law or any similar law. It results therefore that the proscription of belief is the proscription of speech. This is the thing aimed at. This is the constitutional right which is abridged when "beliefs" are regulated or proscribed.

Let us suppose that Congress should pass a law prohibiting all persons within the District of Columbia from "believing" in Christian Science, and a penalty should be affixed to such belief. If an attempt was made to give this law the appearance of conformity to the Constitution it might be provided that no one should be punished for expressing a belief in Christian Science or for advocating the doctrines of Christian Science. Now what would be the result? In the first place no one could be punished for the belief until the belief was expressed, because the belief could not be manifested except by expression. The administrators of the law would be driven into the hypocrisy of claiming that the punishment was for the belief and not for the speech. But then it would result that either the speech upon Christian Science would be silenced because such speech afforded evidence of the interdicted belief; or the speech would be carried on to the end that the interdicted belief would thrive. Did the framers of the Constitution intend that instrument to be the subject of such pitiable sophistry as this? But there can be no escape from such deductions if any attempt is made to detach free speech from free belief.

The fundamental basis of free opinion demands that convictions shall be freely spoken to the end that the truth shall be known. Upon this freedom all progress depends. Suppose that it had been possible during the last 1,500 years to regulate beliefs, what would have been the condition of the world to-day? To interdict absolutely a given belief is to interdict its expression. If the interdicting of the first be possible men will not furnish evidence of their disobe-

dience by expressing their opinions. Practically speaking the spirit of man leaps over such limitations upon his freedom. But the course of history shows in Spain, Germany, the Netherlands, France and England that whatever was prohibited as a belief was a *fortiori* prohibited as to speech. And if beliefs could have been regulated their dissemination were necessarily regulated. If men cannot believe or disbelieve they have no right to procure others to believe or disbelieve. The means of procuring others to believe or disbelieve (that is speaking and writing) are something more than the evidence of the belief or disbelief. They are the criminal instrumentalities by which others are brought to commit the crime of believing or disbelieving which is prohibited to them and to all.

The right generally of any nation to exclude aliens rests upon the doctrine of force. There is such a thing as world-citizenship, which carries with it the right under the law of freedom to go anywhere in the world. All treaties on the subject of passing to and fro in the countries of the contracting parties are a recognition of the right. The regulation by stronger powers of weaker powers of the entry of citizens of the former into the territory of the latter and the indemnity which is required if their citizens are injured in person or property is another recognition of the right. The exclusive right of any people to any given territory has no substantial basis except in despotism and ignorance. It is true that in the vindication of the law of equal freedom, or liberty, any people may prevent their own destruction in time of war which would be occasioned by the influx of vast numbers of armed men. But this would be an

attempt on the part of such invaders to assert their exclusive right to such invaded territory. In times of peace also the assertion of the law of liberty may require the exclusion of some persons. But though the legislative power be lodged in a constituent assembly the law of liberty must be observed. When sympathizers with the French Revolution were excluded by Great Britain during the progress of that momentous event what was it that caused Mr. Fox and others to decry the law of exclusion as "utterly irreconcilable with the principles of the Constitution"? There may not be to some minds any conceivable difference between an exclusion based upon the existence of disease in the subject and an exclusion based upon his belief. And yet it exists. Congress, which is not a constituent assembly, but which is a representative body bound down by the strictest grants of agency, has not only the general principle of liberty to consider in enacting exclusion laws but must see to it that those laws are conformable to the grants of power. It cannot be said that Congress may exclude any person for a good reason or for a bad reason. That which is not possible to Parliament, which is bound by the ethical law, cannot be possible to Congress, which is bound in spirit by the ethical law and in substance by express limitations. Instead of regulating the admission of immigrants suppose it were conceived desirable to mould others according to a preconceived idea or to make them the adherents of a dominant party. Congress may establish rules of naturalization. But could it be said that a law would be constitutional which denied the right of naturalization to one who "disbelieved" in the doctrine of

"free trade" or the doctrine of "implied powers"? Could Congress enact that all Russians who should be naturalized should submit to a capitation tax different from that allowable by the Constitution? Could Congress enact that all Germans who should be naturalized should waive the right of trial by jury? Could Congress enact that all Englishmen who should be naturalized should submit to attainder in case of treason? Could Congress enact that all Irishmen who should be naturalized should not have freedom of speech or of the press, or the right to assemble and petition the government for redress of grievances? Could Congress enact that all Chinese or negroes who should be naturalized should submit to such laws regarding involuntary servitude as any state in which they should become citizens might pass? In brief, does the mere power to exclude an alien or admit him upon some theory carry with it the power to overleap positive limitations upon Congress expressed in the body of the Constitution and in the Bill of Rights? If not, the law of 1903 cannot be said to be constitutional. For, if it be, the exclusion may be extended from anarchists to the adherents of any economic or governmental doctrine, or the adherents of any religious faith. No line can be drawn when the barriers are once broken down. If one class can be singled out at one time by the party in power, another class can be singled out at another time by a different party in power. Whatever class the paramount party proscribes must in such case be lawfully proscribed, if the doctrine be sound that aliens can be excluded for a good or for a bad reason. We know of no scheme that can be imagined by which ancient wrong or

intrenched power can better perpetuate themselves.

It is only a step from this power to the right to control citizens in their beliefs and speech. Some new sophistication of the Constitution will furnish the reason for reviving the terrors and persecutions of the middle ages. If men can be deported at any time within three years they can be deported within any time whatsoever, be it 20 years or 40 years. If the sovereign powers of the federal government warrant Congress in excluding an alien for a good reason or a bad reason and for deporting him at any time within three years, he can be deported whenever his proscribed principles, whatever they may be, are discovered by the federal constabulary. And thus by no stretch of imagination do we see the law develop into an engine of despotism to be used upon citizens of long residence in this country. And if these laws can be made valid against aliens then natural born American citizens can likewise be proscribed and outlawed as to every right or privilege coming under the power of the federal government. The prohibition against *ex post facto* laws will not hinder Congress under such an interpretation of the Constitution from attaching to the law of naturalization a provision to withdraw citizenship and to deport at any time whatsoever and whenever the proscribed principles of the unfortunate man are ascertained.

The law creating the Department of Commerce and Labor expresses more in its title than its body warrants. It is a Department of Commerce but not of labor. There is nothing in this law which is other than detrimental to labor. We see in the arrest of Turner an exemplification of this fact. A world-wide

conspiracy exists to-day among "masters" (as Adam Smith declared a conspiracy in some form is always in existence among masters) to dominate laborers.

> "Masters are always and everywhere in a sort of tacit but constant and united combination not to raise the wages of labor above their actual rate."—Wealth of Nations.

Laborers are to be struck down in the name of labor. The law creating the Department of Commerce and Labor is an elastic and ambiguous enactment. One of its unsuspected powers is the power to arrest labor agitators because of their beliefs on government and to place organized labor in the position of defending riot and bloodshed (supposed to be synoyms of anarchy) if it comes to their aid. It remains to be seen whether those great principles of free government secured at incalculable cost through the dark centuries that have passed will stand the strain which organized greed will bring to bear upon them. The economic struggle now going on is the same struggle that was made against feudalism. It is what Lord Tennyson called a "new-old revolution," having for its central force the aspirations of the masses for a better life and the determination of a few not to allow any change to be made. If this republic consecrated by the memories of some of the greatest disciples of liberty which the world has known, can solve this problem in its new aspect, it will stand more conspicuously in history than any country of the past. Any man in power or out of power who measureably contributes to the success of this struggle which

amounts to the lifting up of men, will place himself by the side of Milton and Jefferson.

II.

Sections 10, 19, 21, 22, 24 and 25 are unconstitutional and void because they transfer judicial power to the executive branch of the Federal Government; Whereas Section 1 of Article III declares that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Section 10 of the Act of March 3rd, 1903, provides that the decision of the Board of Special Inquiry, hereinafter provided for, shall be final as to the rejection of aliens afflicted with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under Section 2 of the Act. As before shown, Section 2 of the Act specifies the classes of aliens which shall not be admitted to the United States. Whether a disbelief in organized government is a mental disability or not, it at least appears that to the Board of Special Inquiry is delegated the power of passing upon that question. Furthermore, by Section 10, the decision of this Board is made final.

Section 19 of the Act empowers the Secretary of the Treasury to suspend the operation of the exclusion law as to aliens who have come to this country under promise or agreement of labor or service of any kind.

Section 21 empowers the Secretary of the Treasury

to cause any alien to be taken into custody and returned to the country from whence he came, at any time within a period of three years after the landing or entry of such alien within the United States.

Section 22 empowers the Commissioner General of Immigration under the direction of the Secretary of the Treasury to have charge of the administration of laws relating to the immigration of aliens into the United States, and to have control, direction and supervision of all officers, clerks and employes appointed thereunder. He is further given power to make such rules and regulations, prescribe such forms of bonds, reports and entries and other papers, and to issue from time to time such instructions not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this act.

Section 24 provides that immigrant inspectors and other immigration officers, clerks, employes shall hereafter be appointed and their compensation fixed, and raised or decreased from time to time, by the Secretary of the Treasury, upon the recommendation of the Commissioner General of Immigration. This section further provides that immigration officers shall have the power to administer oaths, and to take and consider testimony touching the right of any alien to enter the United States, and where such action may be necessary, to make a written record of such testimony. And any person to whom such oath has been administered, under the provisions of this Act, who shall knowingly or wilfully give false testimony or swear to any false statements in any way affecting or in relation to the right of an alien to

admission to the United States, shall be deemed guilty of perjury and be punished as provided by Section 5392 of the United States Revised Statutes. This section further provides that the decision of any such officer if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer, and such challenge shall operate to take the alien, whose right to land is so challenged, before the Board of Special Inquiry for its investigation. It is further provided by this section that every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond all doubt entitled to land, shall be detained for examination in relation thereto by the Board of Special Inquiry.

Section 25 provides that Boards of Special Inquiry shall be appointed by the Commissioners of Immigration at the various ports of arrival for the prompt determination of the cases of all aliens detained at such ports under the provisions of the law.

Section 25 further provides that such Boards of Special Inquiry shall consist of three members, who shall be selected from such immigrant officers in the service as the Commissioner General of Immigration, with the approval of the Secretary of the Treasury, shall from time to time designate as qualified to serve on such boards.

Section 25 further provides that such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or be deported; that all hearings before boards shall be separate and apart from the public; but that such

board shall keep a complete and permanent record of their proceedings and of such testimony as shall be produced before them; that the decision of any two members of the board shall prevail and be final, but either the alien or any dissenting member of said board may appeal through the Commissioner of Immigration at the port of arrival and the Commissioner General of Immigration to the Secretary of the Treasury, whose decision shall then be final, and that the taking of such appeal shall operate to stay any action in regard to the final disposal of the alien whose case is so appealed until the receipt by the Commissioner of Immigration at the port of arrival of such decision.

The question which arises upon this branch of the argument is whether or not the Act of March 3rd, 1903, violates Section I of Article III of the Constitution, which declares that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish. This question may be examined in the light of history, for it is well known that in the organization of the government of the United States the intent was to clearly divide the executive, legislative and judicial branches of the government in such a manner that none should encroach upon the jurisdiction and power of either of the others. The framers of the Constitution conceived this to be a safeguard of liberty. They held that if the executive branch of the government could usurp legislative or judicial functions the government to that extent would become absolute in its character. They sought to so divide the powers of the government and so to oppose them to each other that no

department should become sufficiently energetic to be a menace to the rights of the people.

This is the history of the division of power in the general government as given by Mr. Bryce in his American Commonwealth, Vol. I, p. 282:

> "When the famous treatise on the spirit of laws appeared in 1748, the treatise belonging to the small class of books which permanently turned the course of human thought, and which, unlike St. Augustine's city of God turned it immediately, instead of having to wait for centuries, until the hour of its power arrived, dwelt on the expression of the legislative, executive and judicial power in the British constitution as the most remarkable feature of that system. Accustomed to see the two former powers, and to some extent the third also exercised by or under the direct control of the French monarch, Montesquieu attributed English freedom to their expression. The king of Great Britain then possessed a larger prerogative than he has now, and as even then it seemed on paper much larger than it really was, it was natural that a foreign observer should underrate the executive character of the British Parliament and overrate the personal authority of the monarch. Now, Montesquieu's treatment was taken by thinkers of the next generation as a sort of bible of political philosophy.
>
> "Hamilton and Madison, the two earliest exponents of the American Constitution they had done so much to create, cite it in the Federalist, much as the school men cite Aristotle, that is, as

an authority to which everybody will bow, and Madison in particular constantly refers to the expression of the three powers as the distinguishing note of a free government. * * * From their colonial and state experience, coupled with these notions of the British constitution, the men of 1787 drew three conclusions, first that the vesting of the executive and the legislative powers in different hands was a normal and natural feature of a free government; secondly, that the power of the executive was dangerous to liberty and must be kept within well defined boundaries. Thirdly, that in order to check the head of the State, it was necessary not only to define his powers and appoint him for a limited period, but also to destroy his opportunities of influencing the legislature. *Conceiving that ministers as named by and acting under the orders of the president would be his instruments rather than faithful representatives of the people, they resolved to prevent them from holding this double character, and therefore forbade any person holding office under the United States to be a member of either house.*" (Italics ours.)

At another place (Vol. I, p. 284) the same author wrote:

"Thus it was believed in 1787 that a due balance had been arrived at, the independence of Congress being secured on the one side, and the independence of the president on the other. Each power holding the other in check, the people, jealous of their hardly won liberties would be

accorded by each and safe from the encroachment of either. There was, of course, the risk that controversies as to their respective rights and powers would arise between these two deparments, but the creation of a court entitled to place an authoritative interpretation on the Constitution in which the supreme will of the people was expressed, provided a remedy available in many if not in all such cases, and a security for the faithful observance of the Constitution, which England did not, and under her present system of an omnipotent Parliament could not possess."

Mr. Bancroft in his history of the Constitution, Vol. I, p. 327, made this reference to the subject:

"The tripartite division of government into legislative, executive and judicial, enforced in theory by the illustrious Montesquieu, and practiced in the home government of every one of the American States, became a part of the Constitution of the United States, which derived their mode of instituting it from their own happy experience. It was established by the federal convention with a rigid consistence that went beyond the example of Britain, where one branch of the legislature still remains a court of appeal. Each one of the three departments proceeded from the people, and each is endowed with all the authority needed for its just activity."

The principle announced by Montesquieu to which the framers of the Constitution conformed is found in Book II, Sec. 6, of the Spirit of Laws:

"In every government," wrote Montesquieu, "there are three sorts of powers, the legislative in respect to things dependent on the law of nations, and the executive in regard to matters that depend on the civil law. By authority of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have already been enacted. By the second he makes peace or war, sends or receives embassies, establishes the public security and provides against invasion. By the third he punishes criminals or determines disputes that arise between individuals. The latter we shall call the judiciary power, and the others simply the executive power of the state. The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty it is requisite that governments be so constituted as that one man need not be afraid of another. When the legislative and executive power are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There

would be an end of everything were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting the laws, that of executing the public resolutions, and of trying the causes of individuals. Most kingdoms in Europe enjoy moderate government because the prince is invested with the two first powers and leaves the third to his subjects. In Turkey, where these three powers are united in the Sultan's person, the subjects groan under the most dreadful oppression."

Locke in his work on Civil Government (Chapter 14) used this language:

"The legislative and executive powers are in distinct hands in all moderated monarchies and well framed governments."

The proceedings of the Constitutional Convention show that it was the intention of the framers of the Constitution to distinctly divide the departments of the government according to the principle of Montesquieu:

"On Tuesday, May 29, 1878, Charles Pinckney, delegate from South Carolina, offered a draft of a Constitution, Article 1 of which reads as follows:

"The style of this government shall be the United States of America, and the government shall consist of supreme legislative, executive and judicial powers."

Madison's Debates, p. 64.

"On May 30, 1787, Edmund Randolph, delegate

from Virginia, offered a resolution, Section 3 of which is as follows:

"That a national government shall be established, consisting of a supreme legislative, executive and judiciary."

Madison's Debates, p. 73.

"On June 13, 1787, Nathaniel Gorham, of Massachusetts, submitted a report to the convention, Article 1 of which reads:

"RESOLVED, That it is the opinion of this committee that a national government ought to be established, consisting of a supreme legislative, executive and judiciary."

Madison's Debates, p. 160.

When the Constitution was before the people for adoption Mr. Madison in the 46th number of the Federalist took occasion to vindicate the Constitution in these words:

"No political truth is certainly of greater intrinsic value, or stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The enumeration of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few or many, and whether hereditary, self-appointed or elective, may justly be pronounced as a definition of tyranny. Were the federal Constitution, therefore, really attended with this enumeration of power, or with a mixture of powers which have any dangerous tendency to statutory enumeration, no further argument would be necessary to inspire universal reprobation of the system. I

persuade myself, however, that it will be made apparent to every one that that charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three departments of power should be separate and distinct. The oracle who is always consulted and cited on this subject, is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind."

This court has frequently recognized this fundamental principle of the American system. But it was never done so in more definite language than in the case of *Kilbourn* v. *Thompson*, 103 U. S. 168, a case decided in 1880. The court, speaking through Mr. Justice Miller, said:

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers entrusted to governments, whether state or national, are divided into the three grand departments of the executive, the legislative and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly

defined. It is also essential to the successful working of this system, that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the United States some important exceptions. One of these is, that the President is so far made a part of the legislative power, that his assent is required to the enactment of all statutes and resolutions of Congress.

"This, however, is so only to a limited extent, for a bill may become a law notwithstanding the refusal of President to approve it, by a vote of two-thirds of each House of the Legislature.

"So, also, the Senate is made a partaker in the functions of appointing officers and making treaties, which are supposed to be properly executive, by requiring its consent to the appointment of such officers and the ratification of treaties. The Senate also exercises the judicial power of trying impeachments, and the House of preferring articles on impeachment.

"In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines in its three primary articles, the allotment of power to the executive, the legislative, and judicial department of the government. It also remains true, as a general rule, that the powers confided by the Constitution

to one of these departments cannot be exercised by another."

Whether an alien is afflicted with small-pox or leprosy, perhaps in some cases whether an alien is an epileptic, imbecile or lunatic, is not a judicial question, although cognate to such a question. The office of inspection imports a looking over in cases where ocular proof is at hand. But whether an alien is a polygamist or an anarchist, or whether, if a Chinaman, he is a citizen or one to whom the law does not apply is strictly a judicial question. The government of Russia requires no other or different power than that which must be defended in this law to deport unwelcome persons from its territory.

What do we have in the case at bar, as shown by the proceedings against this appellant? In the first place there was a warrant upon which a federal constable seized the person of Turner. So far as appears no oath was made by any one upon which the warrant issued. The whole proceeding was as summary as that of a *"lettre de cachet."* An executive secretary! A Secretary of Commerce and Labor by his own will issued a warrant, for which there does not seem to be even in this extraordinary law the slightest provision, to arrest a man who had come to this country to lecture to labor unions; and pursuant to that warrant this labor lecturer was arrested at the close of his address on "Trade Unionism and the General Strike." In brief, the Secretary of Labor caused a labor organizer to be arrested after an address upon the subject of labor and for his private opinion upon an abstract theory of government.

Next Turner was taken before a board of "Special Inquiry." The papers seized from his person by the officer who arrested him were offered in evidence. The warrant referred to was issued four days before the arrest (October 19th), so that the government had an opportunity to get evidence to sustain it before executing it. Certain of Turner's remarks were taken down at the meeting in question (October 23) and written out and offered in evidence before the board. Turner was then put upon the stand, whether by compulsion or whether he took the stand voluntarily does not appear. He was interrogated, at any rate, by a member of the board, and not by his counsel for he had none. The "trial" was secret, "apart from the public." The inquisition was not extended because Turner made no denial of his theoretical views upon government. But to show to what passes a similar examination might come, we quote from the record (1 p.):

> "Q. How long have you been in the United States?
>
> A. Is it necessary that I should answer that, commissioner?
>
> Q. The statutes contemplate that aliens shall give all information to immigration officers.
>
> A. Well, to-day is Saturday—ten days."

If the statutes contemplate that aliens are bound to furnish evidence against themselves the policy of the republic has suffered a lamentable devolution.

But again:

> Q. And you admitted previously that your arrived via Canada?

A. No, I did not, commissioner.

Q. You will deny that? A. I neither affirm or deny it."

Some question arose as to the positive identity of certain books and papers in evidence. In speaking of these Turner said: "I think they have probably got in by mistake. I have never seen them before. I think this is an error—I would not say that this book was in my pocket; of course it is the same date. I saw that number before." Now, Mr. Weldon, an inspector, and one of the judges on this occasion, abdicated his magistracy to say: "I want to say positively that I took that from Mr. Turner's overcoat pocket last night."

MR. TURNER: Of course it is only a little technicality, but I think that is the same number."

Now if this law is held valid the same course of procedure, but growing more insolent and drastic with time, will obtain in all cases where the executive department or even the constabulary at the ports see fit to adopt it. We are aware that this court in *Fong Yue Ting* v. *United States*, 149 U. S., 698, and in other cases, has held that the executive officers of the government have plenary power under the authorization of Congress to execute the exclusion laws.

But flagrant abuses and outrageous tyrannies are at hand even if the present case can by any possibility be passed over, when enlightened men will hasten to arrest the administration of this law and of still more despotic laws. And then the question will be, how can the line be drawn in the face of previous acquiescence and what shall be the distinguishing

principle? Congress cannot have power to confer the judicial office upon any department except the courts. It cannot usurp judicial functions itself nor confer upon this court its powers of legislation. This principle is fundamental and nothing more in argument is required to show that this law does confer judicial power upon an executive secretary and his clerks and appointees.

If men are to be excluded under any given law they are to be excluded according to law and under the law. If they are to be excluded for instance for having been convicted of a crime or misdemeanor the fact of such conviction is a question which only a court can determine and only men trained in the principles of evidence know how to determine. In a court the investigation of such a question is frequently attended with many nice distinctions and reasons. Whether the person supposed to have been convicted is the same person; whether in fact he was convicted of a felony or only of a misdemeanor; whether in fact instead of a conviction there was only a charge of a felony or misdemeanor are always present in such cases. Are these questions to be submitted to prosecutors, to inspectors who execute the process of their superiors? But the statute declares that conviction of a crime or misdemeanor not involving moral turpitude shall not be ground of exclusion. Is this delicate subject which enters the domain of ethics, economics, jurisprudence and political history to be committed to the constabulary of this republic? What crimes and misdemeanors involve moral turpitude and what do not? Would William Penn, if he had been convicted of "preaching and teaching", have been in-

volved "in moral turpitude"? Are persons who are convicted of reading Herbert Spencer and exiled involved in moral turpitude? Was Jean Valjean involved in moral turpitude for stealing a loaf of bread under the dire necessity of hunger? If Turner, this appellant, had been convicted somewhere of preaching collectivism would he have been involved in moral turpitude? Can any language called law be upon its face more absurd, and in its character more pregnant with boundless despotism than this provision under consideration? But the section (2) goes further and declares that conviction for an offense purely political and not involving moral turpitude shall not exclude. All political offenses involve moral turpitude in the jurisdiction where they are punished. If they did not involve moral turpitude there they would not be political offenses. But what is a political offense as distinguished from any other offense? If a political offense involves moral turpitude in Germany, why should it be held not to involve moral turpitude in the United States? What is the criterion? When is an offense political only and when criminal only? When is a political offense tainted with moral turpitude and when is it a praiseworthy offense? Are these questions to be determined by men ignorant of law and bred to hunt men and gather evidence? Has the time come when officers of our ports can exclude those men of other countries who in every age are the martyrs of Liberty,—the Kosciuskos, the Sidneys, the Hampdens,—some of whom in an earlier day came to this country and helped to make it what it was. Can such exclusions be made by such officers deciding either that the offense was not political, or

that it was political and involved moral turpitude? If so, those provisions of the Constitution which go to the very competency of Congress and to the protection of all persons might as well be undecipherable hieroglyphics buried in the sands of the remotest desert.

The decisions of the lower federal courts to be cited on another branch of the argument show that fallen women, or those alleged to be such, are subjected to the most unwarranted conduct on the part of immigration officials. For that matter the question whether a woman is a prostitute frequently taxes the powers of the judiciary as many libel suits plainly evidence. The point is that the law gives it into the hands of the executive to exclude any person who may happen to be objectionable upon the determination of his inferiors that the person is a prostitute or otherwise within the law. That this law will never be so used is no argument. If it never will be, the power should not be granted; for it is useless to give power that will not be used. Mr. Jefferson, commenting upon the Alien and Sedition Acts, for which the Federal party went to ruin, said:

> "The same act undertaking to authorize the president to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, without defense, without counsel, is contrary to these provisions also of the Constitution, is therefore not law, but utterly void and of no force."—Kentucky Resolutions.

These resolutions have the force of sovereign approval. Mr. Jefferson was triumphantly elected president upon them. Many of their principles are repeatedly reaffirmed by this court to this day. They were written by the hand which wrote the Declaration of Independence and they never have been overthrown in the forum of reason where the verdicts of history are made up.

But the section also provides that "professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession" shall not be excluded so far as the contract labor clauses of the act are concerned. This qualification leaves the "constabulary" free to determine whether any of such persons falls under some other prohibition, as, for instance, whether he is an anarchist, or disbelieves in or is opposed to all organized government. Now it is well known that the opinion of those millions of men in this country and abroad who have rid themselves of the superstition that government is an end, vary in intensity of individualism. Some hold that government may legitimately protect life and property; others that government may only enforce the law of equal freedom; others that liberty consists in every right except the right to invade. As Mr. Huxley wrote, anarchy or the rule of one's self "is the logical outcome of that form of political theory which for the last half century and more has been known under the name of individualism." When, therefore, does a man cease to be an individualist and become an anarchist? Mr. Spencer's "Social Statics" is a statement of individualism,

or as it is sometimes said, of philosophic anarchy. Before his day Immanuel Kant, probably the greatest metaphysical intellect that the world has known, in his work on "The Philosophy of Law" had stated the universal principle of right in this language:

> "Every action is right which in itself, or in the maxim on which it proceeds, is such that it can co-exist along with the Freedom of the Will of each and all in action, according to a universal law.
>
> "If, then, my action or my condition generally can co-exist with the freedom of every other, according to a universal law, any one does me a wrong who hinders me in the performance of this action, or in the maintenance of this condition. For such a hindrance or obstruction cannot co-exist with Freedom according to universal Laws.
>
> "It follows also that it cannot be demanded as a matter of Right, that this universal Principle of all maxims shall itself be adopted as my maxim, that is, that I shall make it the *maxim* of my actions. For any one may be free, although his freedom is entirely indifferent to me, or even if I wished in my heart to infringe it, so long as I do not actually violate that freedom by *my external action*. Ethics, however, as distinguished from Jurisprudence, imposes upon me the obligation to make the fulfillment of Right a *maxim* of my conduct.
>
> "The universal Law of Right may then be expressed thus: 'Act externally in such a manner that the free exercise of thy Will may be able to co-exist with the Freedom of all others, accord-

ing to a universal Law.' This is undoubtedly a Law which imposes obligation upon me; but it does not at all imply and still less command that I *ought*, merely on account of this obligation, to limit my freedom to these very conditions. Reason in this connection says only that it *is* restricted thus far by its Idea, and may be likewise thus limited in fact by others; and it lays this down as a Postulate which is not capable of further proof. As the object in view is not to teach Virtue, but to explain what right *is*, thus far the Law of Right, as thus laid down, may not and should not be represented as a motive-principle of action."

Mr. Spencer in the "Principles of Ethics," Vol. II, p. 72 (D. Appleton & Co.), thus stated the rule:

"As direct deductions from the formula of justice, the right of each man to the use of unshackled limbs, and the right to move from place to place without hindrance, are almost too obvious to need specifying. Indeed these rights, more, perhaps, that any others, are immediately recognized in thought as corollaries. Clearly, one who binds another's limbs, chains him to a post, or confines him in a dungeon, has used greater liberty of action than his captive; and no less clear is it that if by threatened punishment or otherwise he debars him from changing his locality, he commits a kindred breach of the law of equal freedom.

"Further, it is manifest that if, in either of these ways, a man's liberty of action is destroyed

or diminished, not by some one other man, but by a number of other men acting jointly—if each member of a lower class thus has his powers of motion and locomotion partially cut off by the regulations which a higher class has established, each member of that higher class has transgressed the ultimate principle of equity in like manner if in a smaller degree."

* * * * * * * * * * *

We return therefore to the question, how is this most subtle and intricate status of opinion to be determined and what possible consequence, form of detention or deportation can follow its determination that is not an invasion of liberty? Is not the determination itself a species of despotism? It is well known, as before stated, that thousands of lecturers, teachers, ministers and professional people are individualists of some sort. Shall immigration inspectors, forming themselves into boards of "Special Inquiry" be permitted to examine this philosophical subject? Shall an executive secretary pass upon the appeal from such a board; and shall the facts ascertained by these persons be foreclosed against an alien in this court or in an inferior court of the United States?

When does an individualist cease to be such and become an anarchist? What sort of a position does this country expect to occupy before the world of mind when it is known that lecturers upon anarchy or any other subject are free to pass in and out of England and France and to deliver their lectures in those countries? Under this law it is given into the hands of inspectors to say who is not an anarchist,

or who disbelieves and who does not disbelieve in organized government. That the law may never be used against any very distinguished persons proves that its administration may be partial, but not that it is constitutional or ethical. If the power exists to exclude an alien because he disbelieves in organized government, it exists to exclude an alien for any degree of disbelief in the assumed functions of a government. That degree of disbelief possible to be fixed may vary up to the point where no one might be admitted who disbelieved that the lawful province of government excluded any regulation over the lives of persons whatsoever, even to the fixing of fashions in dress. And if the ascertainment of the mind of the alien on the subject of anarchy may be committed to inspectors and boards of inquiry appointed by the executive department it can be committed on any supposed subject. If this be not usurpation and very dangerous usurpation, we do not know what could be usurpation.

The following utterances of this court elucidate the doctrine that courts must exercise the judicial functions. In the case of *Marbury* v. *Madison*, 1 Cranch, 173, Mr. Chief Justice Marshall said:

> "The constitution vests the whole judicial power of the whole United States in one Supreme Court, and such inferior courts as Congress shall, from time to time, ordain and establish."

Again in *Martin* v. *Hunter's Lessee*, 1 Wheat. 330, this court in 1816, speaking through Mr. Justice Story, said:

> "If, then, it is the duty of Congress to vest the

judicial power of the United States, it is a duty to vest the whole judicial power. The language, if imperative as to one part, is imperative as to all. If it were otherwise, this anomaly would exist, that Congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the constitution, and thereby defeat the jurisdiction as to all; for the constitution has not singled out any class on which Congress are bound to act in preference to others."

In line with this decision Mr. Kent's remarks in his admirable commentaries may be quoted:

"The constitution declares that 'The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish.' In this respect it is mandatory upon the legislature to establish courts of justice commensurate with the judicial power of the Union. Congress have no discretion in the case. They were bound to vest the whole judicial power in an original or appellate form, in the Court's mentioned and contemplated in the constitution, and to provide courts inferior to the supreme court, in which the judicial power unabsorbed by the supreme court, might be placed. The judicial power of the United States is, in point of origin and title, equal with the other powers of the government and is as exclusively vested in the courts created by or in pursuance of the constitution, as the legislative power is vested in Congress, or the executive power in the President." (Vol. 1, 301.)

A case which illustrated the judicial functions is that of *Andrews* v. *Hovey*, 124 U. S., 694, decided in 1887. The court said:

> "Nor is this a case for the application of the doctrine, that, in cases of ambiguity, the practice adopted by an executive department of the government, in interpreting and administering a statute is to be taken as some evidence of its proper construction. The question before us, as to the validity of a patent, by reason of pre-existing acts or omissions of the inventor, of the character of those involved in the present case, is not a question of executive administration, but is properly a judicial question."

In *Ex Parte Milligan*, 4 Wallace, 2, decided in 1886, Mr. Justice Davis said for the court:

> "The controlling question in the case is this: Upon the fact stated in Milligan's petition, and the exhibits filed, had the Military Commission mentioned in it jurisdiction, legally, to try and sentence him? Milligan, not a resident of one of the rebellious States, or a prisoner of war, but a citizen of Indiana for twenty years past, and never in the military or naval service, is, while at his home, arrested by the military power of the United States, imprisoned and, on certain criminal charges preferred against him, tried, convicted and sentenced to be hanged by a military commission, organized under the direction of the military commander of the military district of Indiana. Had this tribunal the legal power and authority to try and punish this man?

"No graver question was ever considered by this court, nor one which more nearly concerns the rights of the whole people; for it is the birthright of every American citizen when charged with crime, to be tried and punished according to law. The power of punishment is alone through the means which the laws have provided for that purpose, and if they are ineffectual, there is an immunity from punishment, no matter how great an offender the individual may be, or how much his crimes may have shocked the sense of justice of the country, or endangered its safety. By the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people. If there was law to justify this military trial, it is not our province to interfere; if there was not, it is our duty to declare the nullity of the whole proceedings. The decision of this question does not depend on argument or judicial precedents, numerous and highly illustrated as they are. These precedents inform us of the extent of the struggle to preserve liberty and to relieve those in civil life from military trials. The founders of our government were familiar with the history of that struggle; and secured in a written Constitution every right which the people had wrested from power during a contest of ages. By that Constitution and the laws authorized by it, this question must be determined. The provisions of that instrument on the administration of criminal justice are too plain and direct to leave room for misconstruc-

tion or doubt of their true meaning. Those applicable to this case are found in that clause of the original Constitution, which says, 'That the trial of all crimes, except in case of impeachment, shall be by jury;' and in the fourth, fifth and sixth articles of the amendments. The fourth proclaims the right to be secure in person and effects against unreasonable search and seizure; and directs that a judicial warrant shall not issue 'without proof of probable cause supported by oath or affirmation.' The fifth declares 'that no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor be deprived of life, liberty, or property without due process of law.' And the sixth guarantees the right of trial by jury, in such manner and with such regulations that with upright judges, impartial juries, and an able bar, the innocent will be saved and the guilty punished. It is in these words: 'In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.' The securities for personal

liberty thus embodied, were such as wisdom and experience had demonstrated to be necessary for the protection of those accused of crime. And so strong was the sense of the country of their importance, and so jealous were the people, that these rights, highly prized, might be denied them by implication that when the original constitution was proposed for adoption it encountered severe opposition; and, but for the belief that it would be so amended as to embrace them, it would never have been ratified.

"Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be imperiled unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the

great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

* * * * * * * * * * *

"Every trial involves the exercise of judicial power; and from what source did the Military Commission that tried him (Milligan) derive their authority? Certainly no part of the judicial power of the country was conferred on them; because the Constitution expressly vests it 'in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish,' and it is not pretended that the commission was a court ordained and established by Congress. They cannot justify on the mandate of the President, because he is controlled by law, and has his appropriate sphere of duty, which is to execute, not to make, the laws; and there is 'no unwritten criminal code to which resort can be had as a source of jurisdiction.'"

Do not these principles apply to the case at bar?

III.

Sections 10, 19, 21, 22, 24 and 25 are unconstitutional and void upon the additional grounds that they are repugnant to those provisions of the Constitution which declare that "No person shall

be deprived of liberty without due process of law;" that "In all criminal prosecutions the accused shall enjoy the right to a trial by an impartial jury to be informed of the nature of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel for his defense;" and that "No warrant shall issue but upon proper cause supported by oath or affirmation;" and that "No one in any criminal case shall be compelled to be a witness against himself."

In order to exhibit to this court the abuses which have grown up in the administration of the immigration laws, we have thought proper to refer the court to some recent decisions of the lower Federal Courts. From these decisions it is plain that many of the protections which are thrown about persons, whether aliens or citizens, by the organic law, are repeatedly disregarded by the immigrant officials. This results as well from the character of the laws under which they act as from the proneness of human nature to take advantage of power when men are clothed with authority. The act of 1903 is drawn in such a way as to leave to the executive officers, who are charged with its administration, an undue discretion and an almost boundless power in the method of carrying out its provisions. These faults are aside from the plain usurpations which the law, in so many words, has taken and delivered to the executive department of the government.

In *re Lea, et al.*, reported in the Advance Sheets of

the Federal Reporter January 28, 1904, at page 283, Judge Ballinger of the District Court of Oregon said:

> "An orderly form of proceeding before such board is prescribed, having regard to the rights of the alien, applying to land, and a right of appeal is provided for. If the authority to deport aliens found in this country belongs to the immigration officers of the government, such authority should devolve upon the board specially charged with the duty of determining the right to land. It cannot be supposed that Congress was more mindful of the right of an alien seeking to land, than of a person domiciled in the country whose deportation may be attempted. In the present case the petitioners were arrested by an officer whose residence is in Seattle, and whose word was his warrant. Immediately upon arrest the petitioners were required to take an oath and testify against themselves. Ignorant of their rights—if persons arrested for deportation can be said to have rights—with little knowledge of the English language, without opportunity to seek the advice of friends or consult an attorney, they were hurried to the Home of the Good Shepherd, where they were, until brought into court on this writ, closely guarded under an injunction to their keepers not to allow them to see or communicate with any one. In the meantime the officers making the arrest forwarded to the Commissioner of Immigration a report intended as the basis for a warrant of deportation. It was a report which, reaching the Secretary of Commerce and Labor through the channel of the Com-

missioner of Immigration should satisfy that officer that the accused were unlawfully in the country.

The accused have not seen that report. The proceeding was ex parte, summary and presumably secret. There is no presumption against the good faith of the officers. The methods employed, however, leave the person attacked at the mercy of the inspector, who is accuser, arresting officer, prosecutor, judge, jailer. By this method a citizen may be arrested and summarily committed and kept a close prisoner while the warrant for his deportation is being procured. He has no opportunity to appeal, or to petition the courts for a writ of habeas corpus. The exercise of this authority may not be restricted to aliens. *It applies to any person that the inspector decides is an alien.* But notwithstanding all this, the decisions cited by the respondent are to the effect that the political department of the government is charged with the duty not only of deciding who may come into the country, but who may remain in it, and that department may make its own rules and regulations respecting the manner in which its authority is to be exercised, and that its proceedings, of whatever character or however conducted, is due process of law."

Gautier, one of the petitioners in this case, was discharged on sustaining a demurer to the writ of *habeas corpus* and the case of Lea was retained for hearing.

On page 235 of the same Reporter Judge Ballinger further said in discharging Lea:

"From the testimony of the interpreters, it appears that an inspector named Lavin, with Mr. Petrain, an attorney by profession, who acted as interpreter, went to a house of prostitution in this city, where the petitioner was living and represented to her that Lavin was looking for some girls that had come from Seattle, and inquired of her if she knew any such girls. Incidentally she was asked when she came to Portland. Mr. Petrain's recollection is that she said she had been here about three weeks, and that in answer to another question she stated that she arrived in New York in the early part of July of this year. This is according to the recollection of the witness, who says that he will not be positive as to such statement. Later in the day the petitioner was arrested by two policemen, and taken to the city jail where her jewelry and pocket book were taken from her. On the same day she was taken from the jail to the convent of the Good Shepherd, and from the latter place she was again returned to the jail, where she remained until 7 or 8 o'clock in the evening, when she was again taken to the convent, accompanied by Lavin and Mr. Petrain. These repeated visits to the jail were obviously intended to give force to the threats made to the petitioner in the interrogation that followed. Upon her return to the convent with no one present but Lavin and Petrain she was asked to be sworn on a crucifix. She refused. She was informed that she would have to be put under oath. She finally permitted herself to be sworn, but not on the crucifix. The

examination lasted probably an hour. 'Nothing was explained to her.' She was not informed that she could call any witnesses, or could have an attorney, or that she had any rights. Her statements as interpreted were reduced to writing by Lavin. This writing she refused at first to sign. Later under pressure she signed it. She had refused to answer many of the questions asked her. She was threatened with different kinds of penalties—that she would have to remain in custody until she complied with the requests made of her to testify, and that if she did not answer correctly she would be sent to the penitentiary. The interpreter in answer to a question says 'It was a hard proceeding.' He had read of such things as having occurred in the Middle Ages. Some two or three weeks later the petitioner, still being a prisoner at the convent, was subjected to a second interrogation, with another interpreter, who testified that this investigation 'must have taken a couple of hours, probably.' The character of this proceeding and its result did not differ materially from that already had." (126 Fed. Rep., 231.)

Judge Wing of the District Court of Ohio in *U. S. v. Hung Chang*, recently held:

"It has been urged that under the provisions of this section the burden of proof in this proceeding is upon the person arrested to show his right to remain in the United States; that is to say, if no proof is offered, either by the United States or by the person arrested, judgment of

deportation to China must follow as a matter of course. It will be observed that the section referred to only implies in terms to 'any Chinese person or person of Chinese descent.' I hold, therefore, that the burden of proving that the person arrested is a Chinese person or person of Chinese descent is upon the United States, before any burden is cast upon the person arrested to show his right to remain in the United States. The mere fact of arrest can never be considered as proof of guilt of the person arrested, or of the truthfulness of the charge made, or any part thereof. If Congress had intended to provide for so great a departure from the immemorial usages of the Anglo-Saxon law, the act would have read that 'any person arrested under the provisions of this act * * * shall be adjudged to be unlawfully within the United States.' Such legislation would plainly be in contravention of articles 5 and 6 of the amendments to the Constitution of the United States.

Under the provisions of the section referred to, it is plain that any person within the boundaries of the United States may in fact be arrested according to the uncontrolled wish or whim of an affiant or the officer charged with the execution of the warrant, whether such person be a Chinese person or not. The act is potentially operative against every one included within the meaning of the word 'person,' as used in the organic law. I cannot attribute to the national Legislature the purpose of enacting a law the enforcement of which would result in deporting to China any

citizen of the United States without proof other than the affidavit of arrest." (Fed. Rep., 126, 400 Ad. Sheets Feb. 4, 1904.)

Judge Coxe in *ex parte Sing* (C. C.) 82 Fed. 22, said:

"The act of 1892 is concededly a most drastic and summary law. Its machinery should not be set in motion by straining the evidence so as to convict those who, because of their ignorance of our language and institutions, are peculiarly helpless and unable to protect themselves. It is one of the safe-guards of our organic law that no one should be compelled to incriminate himself, and the courts have gone to the greatest lengths in inforcing this principle by a broad and liberal interpretation. It has never been construed in a narrow or illiberal spirit, or relaxed so as to endanger civil freedom, or oppress one, no matter how lowly, whose liberty is threatened. A Chinese person is entitled to demand that the judgment of deportation against him shall be based on legal evidence."

Judge Wing has in a case very recently decided and not yet reported held that a portion of the Chinese exclusion law is unconstitutional, because the alleged Chinese can be arrested on affidavit and brought to trial before the commissioner, thus imperiling his liberty without the jury trial or other protection afforded the citizen. These cases evidence the flagrant injustices which have grown up and illustrate the opinions of the judges at circuit concerning the immigration laws in some of their more objectionable aspects.

The constitution provides that no person shall be deprived of liberty without due process of law. This inhibition upon Congress or expression of fundamental right is found in the Fifth Amendment. It is a forbidding sort of logic which attempts to prove that a document of liberty, such as the constitution, may be interpreted to mean that Congress cannot deprive any citizen of liberty without due process of law, but may deprive an alien of liberty without due process of law. If it may logically be so interpreted it is not the instrument of government for a republic; nor is the Declaration of Independence its soul of which itself is but the form and body. But we do not conceive that the subject need be dwelt upon. If Congress may impose this deprivation upon no person it is only a rhetorical transposition to say that Congress may not impose the deprivation upon any person. It is well known that the limitations upon Federal action expressed in the Fifth Amendment were embodied in the Fourteenth Amendment as to state action. The Fifth Amendment reads: "No person shall * * * be deprived of life, liberty or property without due process of law." The Fourteenth Amendment reads: "Nor shall any state deprive any person of life, liberty or property without due process of law." So that if the Fourteenth Amendment is protective of an alien against state action the Fifth Amendment is protective of an alien against Federal action.

In the case of *Wong Wing* v. *U. S.*, 163 U. S., 227, decided in 1895, this court held that portion of Section 4 of the act of Congress of May 5th, 1892, which provided for the arrest and imprisonment at hard

labor of a Chinese laborer who should fail to have the certificate required by the act and should be so adjudged by a commissioner as void because in contravention of the 5th and 6th amendments. "The term 'person,' " said the court, speaking through Mr. Justice Brewer, "used in the 5th amendment is broad enough to include any and every human being within the jurisdiction of the republic."

In *Yick Wo* v. *Hopkins*, 118 U. S., 356, decided in 1885, the opinion delivered by Mr. Justice Matthews, who spoke for the court, is as follows bearing upon the present subject:

> "The rights of the petitioners as affected by the proceedings of which they complain, are not less because they are aliens and subjects of the Emperor of China. By the third article of the Treaty between this government and that of China, concluded November 17, 1880, 22 Stat. at L. 827, it is stipulated: 'If Chinese laborers, or Chinese of any other class, now or either permanently or temporarily residing in the territory of the United States, meet with ill-treatment at the hands of any other persons, the Government of the United States will exert all its powers to devise measures for their protection, and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty.'
>
> "The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty, or property without due process

of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by section 1977 of the Revised Statutes that 'All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses and exactions of every kind, and to no other.' The questions we have to consider and decide in these cases, therefore, are to be treated as involving the rights of every citizen of the United States equally with those of the strangers and aliens who now invoke the jurisdiction of the court."

* * * * * * * * * * *

"For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they are applied by public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as

> to amount to a practical denial by the State of that equal protection of the laws, which is secured to the petitioners, as to all other persons, by the broad and denying provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution."

What then is due process of law? If it be said that it is process according to the law of the land the sophist immediately exclaims that this law of 1903 is the law of the land. If it be said that it is a law appropriate to the circumstances he will aver that this law is appropriate to the circumstances. Due process of law is something more than either of these things. It is that process which conforms to those principles of liberty whose expressions have become clearer and clearer through Magna Charta. The Petition of Right, the Instrument of Government, the Bill of Rights up to the Declaration of Independence and the Federal Constitution. This court in 1819, in the case of *Bank of Columbia* v. *Okely*, 4 Wheat., 244, used this language respecting the Magna Charta:

> "As to the words from Magna Charta, incorporated into the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at

> length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."

Again, Mr. Kent in his Commentaries, Vol. 1, p. 599, wrote:

> "It may be received as a proposition, universally understood and acknowledged throughout this country, that no person can be taken or imprisoned; or disseized of his freehold or estate; or exiled or condemned; or deprived of life, liberty or property, unless by the law of the land or the judgment of his peers. The words, *by the law of the land*, as used originally in Magna Charta, in reference to this subject, are understood to mean due process of law, that is, by indictment or presentment of good and lawful men; and this, says Lord Coke, is the true sense and exposition of those words. *The better and larger definition of due process of law is, that it means law in its regular course of administration, through courts of justice.* (Story, Com. on the Const., Vol. III, 264, 661.)"

This court also defined due process of law in similar language in *Caldwell* v. *Texas*, 137 U. S., 691, the court speaking through Mr. Chief Justice Fuller:

> "Law in its regular course of administration through courts of justice, is due process, and when secured by the law of the State, the constitutional requisition is satisfied. 2 Kent, Com. 13.

> And due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

Because Congress enacts that aliens shall be examined and deported according to certain rules, do not make them due process of law. Because they operate upon all aliens alike do not make them due process of law. Are they "arbitrary," are they the unrestrained exercise of governmental power? Do they violate the "established principles of private right and distributive justice?" Do they take their course "of administration through courts of Justice?" These are the questions to be answered; and each of them must be answered in the negative. This appellant was seized at the conclusion of a lecture by a federal inspector. He was searched. He was taken before a board of "Special Inquiry" composed of his jailers, his prosecutors and the witnesses against him. He was tried in secret. He was subjected to an inquisition; and informed that the laws contemplated that he should give the immigration officers whatever information they desired. If this is due process of law, any sort of an examination is due process of law. For nothing more repugnant to the right of due process of law can be conceived. It is not the sequence of the examination that makes it more or less due process of law. If the penalty of death were affixed to the entry of an anarchist into this country it would simply mean that the consequences of such entry were more draconic than they now are. It would not mean that the preceding steps of the penalty were more repugnant

to the principle of due process of law. In *Calgan* v. *Wilson*, 127 U. S., 540, the court held that "the word 'crime' in its more extended sense, comprehends every violation of public law." "It," continued the court, "is not to be construed as relating only to felonies, or offenses punishable by confinement in the penitentiary. It embraces as well some classes of misdemeanors, the punishment of which involves or may involve the deprivation of the liberty of the citizen. It would be a narrow construction of the Constitution to hold that no prosecution for a misdemeanor is a prosecution for a 'crime' within the meaning of the third article, or a 'criminal prosecution' within the meaning of the 5th amendment."

The human mind is so constituted that a right appears more absolute if its deprivation results in some horror. If the Immigration Act denounced a penalty of death upon the entry of an alien into the United States, it would require little agitation to convince the public, at least, that if such a penalty were to be affixed to such entry the alien should be entitled to "a public trial by an impartial jury, to be informed of the nature and cause of the accusation, and to be confronted with the witnesses against him, etc." Indeed, if the Federal government should ever attempt to extend this law so that a person might be deported at any time that his "disbelief in organized government" should be discovered; and also that his naturalization rights might be withdrawn, there would be sufficient force in public opinion at home and abroad to overthrow the law in the name of the very amendment to the Constitution to which we now appeal. But logically considered the present case is upon the same

footing as the suppositious case. Free governments and their constitutions are not prostrated at a blow by the onslaught of tyranny. They are attacked insidiously, first in one place then in another. One right is taken away under one pretense; and another destroyed under some other pretense. "Thraldom flaunts the banner of Freedom" when it attacks the stronghold of Liberty. Some great benefit is to be attained; life is to be protected; free government is to be conserved; the common people are to be saved from the heresies of false doctrines. These forces of reaction and despotism are ever skulking along the lines of Progress ready for any occasion that may come to pass, which will warrant an attack in the name of the very principles under which humanity is marching. So that written constitutions amount to nothing unless the people understand them and cherish the rights which they express.

If any one doubts that civilization and liberty are upon a treacherous foundation he only need to recur to the spectacle of the law of 1903. If any event, however deplorable, can furnish an excuse for the enactment of such a law as this, other excuses will not be wanting for the enactment of other laws gradually encroaching upon all constitutional right. The history of such devolutions show that each step downward finds its apology in some pretext less conspicuous, until no apology whatever is made for anything that is done; and a people debauched and stupefied by donatives and sophistry cease to require apologies of any sort. These aggressions consolidate into the triumph of "sovereign power." It matters nothing in principle whether the person affected by "admin-

istrative process" is a labor lecturer or a lecturer which the "aristocracy of intellect" places upon a more distinguished basis. No man high or low under our constitution can be dragged before a special board and cross-examined in secret touching his opinions, without the right of having witnesses in his favor, without counsel, without a presentment or indictment, and without any of those formalities which common decency has grown to regard as even the right of a slave. But it may be said that this law will never be used against any such distinguished person. Its secret spirit known to its sponsors will direct the law along its secret course. It might be a regrettable event if some man of commanding power and world-wide fame should lecture here in favor of anarchy; but it would not be wise to convene a board of "Special Inquiry" to stop him. But if it is to be used so far as possible to suppress the agitation of the labor world by men of inferior note, and not to suppress the opinion of distinguished lecturers, that is to suppress by deportation, who is to regulate this discrimination except the president who is at the head of the executive department and direct by word of mouth what is to be done in any given case? If by any possibility the government should have an administration bent upon stamping out the propagation of monarchy it could make no better show of dodging the constitution than by excluding all persons who "disbelieve" in the republican system of government and by providing for the summary deportation of dukes and royal personages and their defenders upon the decree of a board of "Special Inquiry."

Again, where did the Secretary of Labor get the

power to issue this warrant for the arrest of Turner? It may be that the Secretary has entered a rule under the general power of this statute to make regulations for the department, that he may issue his warrants for the arrest of aliens. But this record shows that the appellant for ten days had been within the sovereign territory of the state of New York. And the constitution expressly provides that "no warrant shall issue but upon probable cause supported by oath or affirmation." Has any executive on earth, except the head of a despotism, the power to issue a warrant? Warrants are issued by the judicial department under our system; and warrants issued by any other department are repugnant to all ideas of Anglo-Saxon jurisprudence independent of the constitutional provision invoked. This extraordinary writ does not run in the name of the president or of the people. It is a peremptory direction to certain inspectors to seize John Turner; and the direction proceeds from an executive secretary. The proofs upon which the warrant was issued are not given. The warrant recites "from proofs submitted to me I have become satisfied, etc." The proofs may have been telegrams, letters, newspaper reports, or the verbal report of an inspector. This warrant does not purport to have been issued upon "oath or affirmation." That the Secretary had "proofs" and that he was "satisfied" with them appear by his own recitals in the warrant. But what are "proofs" and what were the "proofs," and what is satisfactory proof are different questions. There is nothing to show that this warrant was supported by the "oath or affirmation" of any one. And

there is nothing in the law requiring any oath or affirmation in support of such a warrant.

Mr. Madison's argument in the "Virginian Resolution" upon the Alien and Sedition Acts very conclusively cover the objections on this branch of the argument to the law of 1903.

> "In the administration of preventive justice," he wrote, "the following principles have been held sacred: *that some probable ground of suspicion be exhibited before some judicial authority; that it be supported by oath or affirmation;* that the party may avoid being thrown into confinement, by finding pledges or sureties for his legal conduct sufficient in the judgment of some judicial authority; that he may have the benefit of a writ of *habeas corpus*, and thus obtain his release if wrongfully confined; and that he may at any time be discharged from his recognizance, or his confinement, and restored to his former liberty and rights, on the order of the proper judicial authority if it shall see sufficient cause.
>
> "All these principles of the only preventive justice known to American jurisprudence are violated by the Alien Act. *The ground of suspicion is to be judged of, not by any judicial authority, but by the executive magistrate alone. No oath or affirmation is required.* If the suspicion be held reasonable by the President, he may order the suspected alien to depart from the territory of the United States, without the opportunity of avoiding the sentence by finding pledges for his future good conduct. *As the President*

may limit the time of departure as he pleases, the benefit of the writ of habeas corpus may be suspended with respect to the party, although the Constitution ordains that it shall not be suspended unless when the public safety may require it, in case of rebellion or invasion, neither of which existed at the passage of the act; and the party being, under the sentence of the President, either removed from the United States, or being punished by imprisonment, or disqualification ever to become a citizen, on conviction of not obeying the order of removal, he cannot be discharged from the proceedings against him, and restored to the benefits of his former situation, although the highest judicial authority should see the most sufficient cause for it.

"But, in the last place, it can never be admitted that the removal of aliens, authorized by the act, is to be considered, not as punishment for an offense, but as a measure of precaution and prevention. *If the banishment of an alien from a country into which he has been invited as the asylum most auspicious to his happiness, a country where he may have formed the most tender connections; where he may have invested his entire property, and acquired property of the real and permanent, as well as the movable and temporary kind; where he enjoys, under the laws, a greater share of blessings of personal security, and personal liberty, than he can elsewhere hope for; and where he may have nearly completed his probationary title to citizenship; if, moreover, in the execution of the sentence against him, he*

is to be exposed, not only to the ordinary dangers of the sea, but to the peculiar casualties incident to a crisis of war and of unusual licentiousness on that element, and possibly to vindictive purposes, which his emigration itself may have provoked;—if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied. And if it be a punishment, it will remain to be inquired whether it can be constitutionally inflicted, on mere suspicion, by the single will of the executive magistrate, on persons convicted of no personal offense against the laws of the land, nor involved in any offense against the law of nations, charged on the foreign state of which they are members."

* * * * * * * * * * *

"Again, it is said that, aliens not being parties to the Constitution, the rights and privileges which it secures cannot be at all claimed by them.

"To this reasoning, also, it might be answered that, although aliens are not parties to the Constitution, it does not follow that the Constitution has vested in Congress an absolute power over them. The parties to the Constitution may have granted or retained, or modified, the power over aliens, without regard to that particular consideration.

"But a more direct reply is, that it does not follow, because aliens are not parties to the Constitution, as citizens are parties to it, that whilst they actually conform to it, they have no right to its protection. *Aliens are not more parties to*

the laws than they are parties to the Constitution; yet it will not be disputed that as they owe, on one hand a temporary obedience, they are entitled, in return, to their protection and advantage.

"*If aliens have no rights under the Constitution, they might not only be banished, but even capitally punished, without a jury or the other incidents to a fair trial.* But so far has a contrary principle been carried, in every part of the United States, that except on charges of treason, an alien has, besides all the common privileges, the special one of being tried by a jury, of which one-half may be also aliens.

"It is said, further, that, by the law and practice of nations, aliens may be removed, at discretion, for offenses against the law of nations; that Congress are authorized to define and punish such offenses; and that to be dangerous to the peace of society, is, in aliens, one of those offenses.

The distinction between alien enemies and alien friends is a clear and conclusive answer to this argument. Alien enemies are under the law of nations, and liable to be punished for offenses against it. *Alien friends, except in the single case of public ministers, are under the municipal law, and must be tried and punished according to that law only.*

"This argument also, by referring the alien act to the power of Congress to define and punish offenses against the law of nations, yields the point that the act is of a penal, not merely of a

preventive operation. It must, in truth, be so considered. And if it be a penal act, the punishment it inflicts must be justified by some offense that deserves it."

* * * * * * * * * *

"The Alien Act declares 'That it shall be lawful for the President to order all such aliens as he shall judge *dangerous* to the peace and safety of the United States, or shall have reasonable ground to *suspect* are concerned in any treasonable or *secret machinations* against the government thereof, to depart,' &c.

"Could a power be well given in terms less definite, less particular, and less precise? *To be dangerous to the public safety—to be suspected of secret machinations* against the government; *these can never be mistaken for legal rules or certain definitions.* They leave everything to the President, his will is the law.

"But it is not a legislative power only that is given to the President. He is to stand in the place of the judiciary also. His suspicion is the only evidence which is to convict; his order the only judgment which is to be executed.

"Thus it is the President whose will is to designate the offensive conduct; it is his will that is to ascertain the individuals on whom it is charged; and it is his will that is to cause the sentence to be executed. *It is rightly affirmed, therefore, that the act unites legislative and judicial powers to those of the executive.*

"It is affirmed that this union of power subverts the general principle of free government.

"It has become an axiom in the science of government, that a separation of the legislative, executive and judicial departments is necessary to the preservation of public liberty. Nowhere has this axiom been better understood in theory, or more carefully pursued in practice, than in the United States.

"It is affirmed that such a union of power subverts the particular organization and positive provision of the Federal Constitution.

"According to the particular organization of the Constitution, its legislative powers are vested in the Congress, its executive powers in the President, and its judicial powers in a supreme and inferior tribunal. The union of any of these powers, and still more of all three, in any one of these departments, as has been shown to be done by the Alien Act, must consequently, subvert the constitutional organization of them.

"That positive provisions, in the Constitution, securing to individuals the benefits of fair trial, are also violated by the union of powers in the Alien Act, necessarily results from the two facts, that the act relates to alien friends, and that alien friends, being under the municipal law only, are entitled to its protection.

* * * * * * * * * *

"And it must be wholly immaterial whether unlimited powers be exercised under the name of unlimited powers, or be exercised under the name of unlimited means of carrying into execution limited powers."

Elliott's Debates, Vol. IV, p. 555, *et seq.*

We submit that these are words of wisdom and entitled to all consideration. No higher authority can be produced than he who was the "Father of the Constitution," and who was one of the most distinguished political thinkers of his day.

The law of 1903 is open to every objection made by Mr. Madison to the Alien and Sedition laws.

This law of 1903 is subversive of the constitutional principle that probable ground of suspicion shall be exhibited to judicial authority before a warrant issues.

It leaves the ground of suspicion in any case to be judged of by the executive and not by the judicial branch of the government.

It suspends the writ of *habeas corpus* by placing it in the power of the executive to order instant deportation with all the power of the government and all its facilities of men, money and ships in the hands of the executive to execute such deportation.

It imposes the penalty of banishment, for deportation is nothing less, without a hearing and without opportunity of defense.

It consolidates the judicial and executive branches of the government, nay the legislative as well, because the terms of the law *are* not certain or definite *and are not intended to be so.* They are intended to be vague and elusive and to leave the executive to construe the law to fit the case and the object desired to be attained.

Are the friends of this law indifferent to the course of history; or do they desire to show that what could not be done an hundred years ago can be done now?

IV.

No power whatever is delegated by The Constitution to the General Government over alien friends with reference to their admission into the United States or otherwise, or over the beliefs of citizens, denizens, sojourners or aliens, or over the freedom of speech, or of the press, whilst the Tenth Amendment to the Constitution expressly declares that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people.

The Constitution was "founded in jealousy and not in confidence," and this is evidenced by the resolutions passed by several of the States which acceded thereto. The States intended to bind down those whom they were about to entrust with power. Through the efforts of the jealous States the Bill of Rights and the Tenth Amendment were proposed and adopted.

Massachusetts ratified the Constitution on February 7, 1788, and submitted to the Congress that certain amendments to the Constitution should be made, as follows:

> "I. *That it be explicitly declared that all powers not expressly delegated by the aforesaid Constitution are reserved to the several States, to be by them exercised.*
>
> "VI. *That no person* shall be tried for any

crime by which he may incur an infamous punishment or loss of life until he be first indicted by a grand jury, except in such cases as may arise in the government and regulation of the land and naval force."

And the representatives of Massachusetts in Congress were enjoined to have said amendments made.

The State of New Hampshire ratified the Constitution on the 21st day of June, 1788, and stated that it was the opinion of the convention that certain alterations and amendments in the Constitution would remove the fears and quiet the apprehensions of many of the good people of this State, and submitted that the following amendments should be made:

"I. *That it be explicitly declared that all powers not expressly and particularly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised.*

"VI. *That no person* shall be tried for any crime by which he may incur an infamous punishment or loss of life until he first be indicted by a grand jury, except in such cases as may arise in the government and regulation of the land and naval forces.

"XI. *Congress shall make no laws touching religion, or infringe the rights of conscience.*"

Virginia ratified the Constitution on the 26th of June, 1788, and in doing so expressed its understanding of the Constitution and its intention in ratifying the same in this language:

"Do in the name and in behalf of the people of

Virginia declare and make known that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whenever the same shall be perverted to their injury or oppression, *and that every power not granted thereby remains with them and at their will;* that therefore no right of any denomination can be canceled, abridged, restrained or modified, by the Congress, by the Senate or House of Representatives acting in any capacity, by the president or any department or officer of the United States, *except in those instances in which power is given by the Constitution for those purposes; and that among other essential rights, the liberty and conscience of the press cannot be canceled, abridged, restrained or modified by any authority of the United States.* 'With these impressions,' etc., we, the said delegates, do by these presents assent and ratify the Constitution, etc."

The State of New York ratified the Constitution on the 26th day of July, 1788, and declared among other things that:

"All powers are originally vested in and consequently derived from the people, and that government is instituted by them for their own interest, protection and security. That the people have an equal, natural and inalienable right, freely and peaceably to exercise their religion according to the dictates of conscience, and that no religious sect or society ought to be favored or established by law in reference to others. *That*

no person ought to be taken in prison or dissezed of his freehold, or be exiled or deprived of his privileges, franchises, life, liberty or property but by due process of law. That except in the government of the land and naval forces, of the militia when in actual service, and in cases of impeachment, a presentment or indictment by a grand jury ought to be observed as a necessary preliminary to the trial of all crimes cognizable by the judiciary of the United States, and *such trials should be speedy and be by an impartial jury of the county where the crime is committed,* and that no person can be found guilty without the unanimous consent of such jury. * * * *That in all criminal prosecutions the accused ought to be notified of the cause and nature of his accusation, and be confronted with his accusers and the witnesses against him; to have means of producing his witnesses, and the assistance of counsel for his defense, and should not be compelled to give evidence against himself.* That people had a right peaceably to assemble. *That freedom of the press was not to be violated or restrained."*

The State of North Carolina in convention, on August 1, 1788, resolved that a declaration of rights asserting and securing from encroachment the great principles of civil and religious liberty, and the inalienable rights of the people, together with amendments to the most ambiguous and exceptionable parts of the said Constitution of government, ought to be laid before Congress, or a convention of the States that shall or may be called for the purpose of amend-

ing the said Constitution for their consideration previous to the ratification of the Constitution aforesaid on the part of the State of North Carolina.

Rhode Island ratified the Constitution on the 29th day of May, 1790, and recommended to Congress that certain amendments should be made, as follows:

> "I. The United States shall guarantee to each State its sovereignty, freedom, independence, *and every power, jurisdiction and right which is not by this Constitution expressly delegated to the United States.*"

Said Rhode Island ratified the Constitution with the understanding:

> "II. *That all power naturally is vested in and consequently derived from the people;* that magistrates, therefore, are their trustees and agents and at all times amenable to them.
>
> "IV. Freedom of religion shall be assured.
>
> "XI. *No freeman ought to be taken in person or disseized of his freehold, liberties, franchise, or outlawed or* EXILED, *or in any manner destroyed or deprived of his life, liberty or property, but by a trial by jury, or by the law of the land.*
>
> "XII. That every freeman ought to obtain right and justice freely and without sale, completely and without denial, promptly and without delay and that all regulations contravening these rights are oppressive and unjust.
>
> "XVI. *That the poeple have a right to freedom of speech, of writing and publishing their sentiments; that freedom of the press is one of*

the great bulwarks of liberty and ought not to be violated."

At the first session of the first Congress under the Constitution, the following resolution was adopted:

"Congress of the United States begun and held at the city of New York on Wednesday, the 4th day of March, 1789. Conventions of a number of the States having at the time of adopting their Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the government, well based in the beneficent ends of its institutions:

"RESOLVED, By the Senate and House of Representatives of the United States of America in Congress assembled, that the following amendments be submitted:

"ARTICLE III. Congress will make no law respecting the establishment of religion or prohibiting the free exercise of thought, or abridging the freedom of speech or of the press or of the right of the people peaceably to assemble and petition the government for the redress of grievances.

"ARTICLE VII. No person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice

put in jeopardy for life or limb, or should be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty or property without due process of law, or shall private property be taken for public use without just compensation.

"ARTICLE XI. *Enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.*

"ARTICLE XII. *Power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*"

Elliott's Debates, Vol. I, p. 322, *et seq.*

It is not remarkable that the act incorporating the United States Bank and the Alien and Sedition acts provoked criticism and protest from those who insisted that the Constitution should be construed to mean what its language says. As to the bank it was known to all the constitutional lawyers of that day that on September 14th, 1787, Mr. Madison made a motion in the constitutional convention to empower Congress to grant charters of incorporation. It was objected by Mr. King that the power to incorporate companies generally would be construed to mean a power to incorporate a bank which would imperil the fate of the Constitution in Pennsylvania and New York. The question was then modified so as to permit Congress to provide for the cutting of canals. A vote was taken on the question as thus modified. Pennsylvania, Virginia and Georgia voted aye; and New Hampshire, Massachusetts, Connecticut, New Jersey,

Delaware, Maryland, North Carolina and South Carolina voted no. The whole matter fell.

Madison's Debates.

It was knowledge of these proceedings in the constitutional convention that caused Mr. Jefferson to write in his Opinion on the Constitutionality of a National Bank (see Jefferson's works (Ed. 1854), Vol. VII, pp. 555-561) that, "It is known that the very power now proposed as a *means* was rejected as an *end* by the convention which framed the Constitution."

This opinion was written in 1791. But in 1798 the Alien and Sedition acts presented to the mind of Jefferson and Madison and many others another example of encroachment upon the plain terms of the Constitution. The vigorous animadversions of Gouverneur Morris did not overstate the case.

> "But, after all," wrote Morris, "what does it signify that men should have a written Constitution, containing unequivocal provisions and limitations? The legislative lion will not be entangled in the meshes of a logical net. The legislature will always make the power which it wishes to exercise, unless it be so organized as to contain within itself the sufficient check. Attempts to restrain it from outrage, by other means, will only render it more outrageous. The idea of binding legislatures by oaths is puerile. *Having sworn to exercise the powers granted, according to their true intent and meaning, they will, when they feel a desire to go further, avoid the shame, if not the guilt, of perjury, by swear-*

ing the true intent and meaning to be, according to their comprehension, that which suits their purposes."

Elliott's Debates, Vol. I, p. 507.

And so it was that Jefferson in attempting to arrest the contempt of the Constitution evinced by the Bank act and the Alien and Sedition acts incorporated in the Kentucky resolutions numerous protests based upon indisputable constructions of the organic law. Resolution IV is as follows:

> "*Resolved,* That alien friends are under the jurisdiction and protection of the laws of the State wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual States distinct from their power over citizens; and it being true as a general principle, and one of the amendments to the Constitution having also declared that 'the powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people'; the act of the Congress of the United States passed on the 22nd day of June, 1798, entitled 'An act concerning aliens,' which assumes power over alien friends not delegated by the Constitution, is not law but is altogether void and of no force."

Jefferson's works (Ed. 1856), Vol. IX, p. 464.

In passing upon other exclusion laws this court has hitherto reasoned their constitutionality from the

Commerce clause of the Constitution, or from the sovereign character of the United States government. This has doubtless resulted from the obvious inability to trace the regulation of immigration to any direct grant of power. We therefore divide the consideration of the power to exclude aliens into two branches, first: can the power be traced to the commerce clause of the Constitution; and second, can it be traced to the sovereign character of the government. This leads to an examination of the extent to which the commerce clause has been authoritatively interpreted by this court. It also leads to an examination of the precise nature and extent of that sovereignty which is alleged to warrant the enactment of such laws.

In *Cohens* v. *Virginia*, 6 Wheat. 398, Mr. Chief Justice Marshall used language which may well be kept in mind in testing the true worth of any given decision of a court:

> "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which these expressions are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing in all other cases is seldom investigated."

And upon the same subject in the case of *Pollock*

v. *Farmers' Loan & Trust Co.*, 157 U. S. 427 (Income tax case), Mr. Chief Justice Fuller in delivering the opinion of the court, used this language:

> "Doubtless the doctrine of *stare decisis* is a salutary one, and to be adhered to on all proper occasions, but it only arises in respect of decisions directly upon the points in issue.
>
> "The language of Chief Justice Marshall in *Cohens* v. *Virginia*, 19 U. S., 6 Wheat. 264, 399, may profitably again be quoted: (Here follows the language just quoted from that case.)
>
> "So in *Carroll* v. *Carroll*, 57 U. S., 16 How. 275, 286, where a statute of the State of Maryland came under review, Mr. Justice Curtis said: 'If the construction put by the court of a State upon one of its statutes was not a matter in judgment, if it might have been decided either way without affecting any right brought in the question, then, according to the principles of the common law an opinion on such a question, is not a decision. To make it so, there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties and decide to whom the property in contest belongs. And therefore this court, and other courts organized under the common law, has never held itself bound by any part of an opinion, in any case, which was not needful to the ascertainment of the right or title in question between the parties.'"

As the power to exclude aliens or regulate immigrants was originally referred to the power to regu-

late commerce as defined by Mr. Chief Justice Marshall in *Gibbons* v. *Ogden,* 9 Wheat. 1, decided in 1824, although later decisions have founded themselves on those alleged to be authorized by the holding in *Gibbons* v. *Ogden,* it becomes necessary to analyze that case. Thus the precise question decided and the precise extent of the decision's authority can be ascertained. Now the language of the Chief Justice, which has furnished the reasoning in some of the exclusion cases, is this:

> "The counsel for appellee would limit it (commerce) to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends *navigation.* This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the *commercial* intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning *navigation,* which shall be silent on the admission of vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling or of barter."

Now the regulation of immigration is not the regulation of "traffic;" it is not the regulation of "commercial intercourse." For while the Chief Justice in

one sentence says that commerce is "intercourse," in the next he said it is "commercial intercourse," that is that the regulation of commerce is the regulation of "commercial intercourse." Taking then this definition of commerce as conclusive of the subject it does not include the subject of immigration at all.

But outside of these considerations what did the case of *Gibbons* v. *Ogden* actually decide, tested by the rule laid down in *Cohen* v. *Virginia* and *Pollock* v. *Farmers' Loan & Trust Company?* The point involved was whether an exclusive right in Ogden by virtue of a law of New York to navigate all the waters within the State, including the waters between Elizabethtown, New Jersey, and New York City, was valid, that is whether the law was constitutional. To show that the power to regulate commerce included the power to regulate navigation the Chief Justice deducted from the commerce power the constitutional exceptions to it. He held that the limits of the power to regulate commerce were described by its remaining boundaries when all exceptions thereto were taken away. And so he referred to the following provisions of the Constitution:

> "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another. Nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another."

In this connection the Chief Justice said:

> "Limitations of a power furnish a strong argument in favor of the existence of that power."

In other words the prohibition upon Congress to discriminate between ports or to require vessels to enter, clear or pay duties in any port, as expressed, imported a power to regulate vessels or navigation in all particulars not prohibited in the clauses quoted or in other parts of the Constitution. The question at issue so far as it related to commerce per se was one of navigation and nothing but navigation. In fact in another part of the opinion the Chief Justice said:

> *"The questions then whether the conveyance of passengers be a part of the coasting trade, and whether a vessel can be protected in that occupation by a coasting license are not and cannot be raised in this case."*

The relation of persons to commerce, or to the regulation of commerce was thus distinctly held not to be in the case. The only question decided was that the power to regulate commerce includes the power to regulate navigation, and this even turned in part upon a subsidiary point, to-wit:

> "The sole question is can a State regulate commerce with foreign nations and among the States while Congress is regulating it?"

It appeared that there was then, in 1824, a law in force passed by Congress February 18th, 1793, entitled "An act for enrolling and licensing ships and vessels to be employed in the coasting trade and fisheries and for regulating the same." So that the subject-matter was already under the regulation of a federal law. The Chief Justice in raising the question whether the State law could stand in face of the fed-

eral law placed himself in line with more clear-cut reasoning upon the same subject in the later case of *Wilson* v. *Black Bird Creek Marsh Co.* But first in *Gibbons* v. *Ogden* he said in delivering the court's opinion:

> "In discussing the question, whether this power is still in the States, in the case under consideration, we may dismiss from it the inquiry, whether it is surrendered by the mere grant to Congress, or is retained until Congress shall exercise the power. We may dismiss that inquiry, because it has been exercised, and the regulations which Congress deemed it proper to make are now in full operation. The sole question is, can a State regulate commerce with foreign nations, and among the States, while Congress is regulating it?
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> * * * * * * * * * *
>
> "We must first determine whether the act of laying 'duties or imposts on imports or exports' is considered in the Constitution as a branch of the taxing power, or of the power to regulate commerce. We think it very clear that it is considered as a branch of the taxing power. It is so treated in the first clause of the 8th section: 'Congress shall have power to lay and collect taxes, duties, imposts, and excises;' and, before commerce is mentioned, the rule by which the exercise of this power must be governed is declared. It is, that all duties, imposts and excises shall be uniform. In a separate clause of the enumeration, the power to regulate commerce is given, as being entirely distinct from the right

to levy taxes and imposts, and as being a new power not before conferred. The Constitution, then, considers these powers as substantive and distinct from each other; and so places them in the enumeration it contains. The power of imposing duties on imports is classed with the power to levy taxes, and that seems to be its natural place. But the power to levy taxes could never be considered as abridging the right of the States on that subject; and they might, consequently, have exercised it by levying duties on imports or exports, had the Constitution contained no prohibition on this subject. This prohibition, then, is an exception from the acknowledged power of the States to levy taxes, not from the questionable power to regulate commerce.

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"The questions, then, whether the conveyance of passengers be a part of the coasting trade, and whether a vessel can be protected in that occupation by a coasting license, are not, and cannot be, raised in this case. The real and sole question seems to be whether a steam machine in actual use deprives a vessel of the privileges conferred by a license."

And then in 1829 in the case of *Wilson et al.* v. *The Black Bird Creek Marsh Company*, 2 Peters, 245, the Chief Justice fully stated the position:

"If Congress had passed any act which bore upon the case; any act in execution of the power to regulate commerce, the object of which was to control State legislation over those small

navigable creeks into which the tide flows, and which abound throughout the lower country of the Middle and Southern States, we should feel not much difficulty in saying that a State law coming in conflict with such act would be void. But Congress has passed no such act. The repugnancy of the law of Delaware to the Constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations, and among the several States; a power which has not been so exercised as to affect the question.

"We do not think that the act empowering the Black Bird Creek Marsh Company to place a dam across the creek can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state or as being in conflict with any law passed on the subject."

We candidly submit that nothing more can be made out of the celebrated and often quoted case of *Gibbons* v. *Ogden* than is expressed in the foregoing analysis. Subsequent decisions of this court hereafter to be referred to distinctly limit its authority to the very subject which we contend it covered.

As the case of *Brown* v. *Maryland*, 12 Wheat. 419, decided in 1827, the decision of the court being delivered by Mr. Chief Justice Marshall, is sometimes referred to, a short review of this case will not be inappropriate. Two laws of the State of Maryland, one passed in 1819 and the other in 1822, required all importers of foreign goods by the bale or package to take out a license for which they should pay $50. The

act of 1819 imposed a fine of $100 for failing to take out such license. Brown and others were indicted for failing to take out the license required by the law. They demurred to the indictment, and the demurrer was overruled and they were fined in the City Court of Baltimore. The judgment was affirmed by the Court of Appeals of Maryland, and the case then went to the Supreme Court of the United States. It was held in this court that the laws of Maryland in question were repugnant to that clause of the Constitution which provides that "no State shall without the consent of Congress lay any imposts or duties on imports or exports." To prove that a license fee to do the business of importing is a tax upon the thing imported the Chief Justice said: "It is impossible to conceal from ourselves that this is varying the form without varying the substance. * * * All must perceive that a tax on the sale of an article, imported only for sale, is a tax on the article itself." Then as to the commerce clause, which was relied upon by the plaintiffs in error, the Chief Justice said: "This question was considered in the case of *Gibbons* v. *Ogden* (9 Wheat. Rep. 1), in which it was declared to be complete in itself, and to acknowledge no limitations other than are prescribed by the Constitution." Now we have already seen what *Gibbons* v. *Ogden* actually held and what was "declared" in that case is immaterial. But it is a species of tautology to say that the commerce clause acknowledges no limitations than those prescribed by the Constitution. This is true or truistic. It amounts to saying that the commerce power is subject to the Constitution, which is true as to every power granted to Congress.

If, however, the Chief Justice meant to introduce the doctrine that the power to regulate commerce was complete except where restrained by constitutional limitations, thus, in such particular making the Constitution a limitation upon power instead of a grant of power, then he was clearly in error, and not only so but incurred his own express assurances to the people of Virginia when the Constitution was before them for adoption. In the State convention of Virginia, of which Marshall was a member, he had said upon the subject of the meaning of the "sweeping clause" (i. e., to make all laws necessary and proper) "that a power was restrained until it was given away." And so the mere power to regulate commerce does not include every power not inhibited, nor does it acknowledge no limitations except those prescribed by the Constitution. Such an interpretation is not conformable to the decisions of this court upon the commerce clause in many later cases.

The historic case of the *Mayor, etc., of the City of New York* v. *Miln*, 11 Peters 101, decided in 1837, bears upon *Gibbons* v. *Ogden*, and corrects the impression given that that case held as much as the language of the Chief Justice has been construed to import.

In the Miln case an act of the legislature of New York passed in 1824 came up for consideration concerning passengers in vessels arriving in New York and requiring the master of the vessel within twenty-four hours to report in writing concerning the names, ages and last legal settlement of every person.

The decision of the court was delivered by Mr. Justice Barbour, and among other things it was said:

> "We shall not enter into any examination of the question whether the power to regulate commerce be or be not exclusive of the States, because the opinion which we have formed renders it unnecessary: in other words, *we are of opinion that the act is not a regulation of commerce, but of police;* and that being thus considered, it was passed in the exercise of a power which rightfully belonged to the States."

Then the court in considered what was decided in the case of *Gibbons* v. *Ogden*, used this language:

> "The point decided in the first of these cases is that the acts of the legislature of New York granting to certain individuals the exclusive navigation of all the waters within the jurisdiction of that State, with boats moved by steam for a term of years, are repugnant to the cause of the Constitution of the United States which authorized Congress to regulate commerce so far as the said acts prohibit vessels licensed according to the laws of the United States for carrying on the coasting trade, from navigating said waters by means of steam. In coming to that conclusion, this court in its reasoning, laid down several propositions, such as that the power over commerce included navigation; that it extended to the navigable waters of the States; that it extended to navigation carried on by vessels exclusively employed in transporting passengers.

Now, all this reasoning was intended to prove that a steam vessel licensed for the coasting trade was lawfully licensed by virtue of an act of Congress; and that as the exclusive right to navigate the waters of New York, granted by the law of that State, if suffered to operate, would be in collision with the right of the vessel licensed under the act of Congress to navigate the same waters; and that as when that collision occurred the law of the States must yield to that of the United States when lawfully enacted; therefore, the act of the State of New York was in that case void.

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"In that case (that is *Gibbons* v. *Ogden*) the theater on which the law operated was navigable water, over which the court say that the power to regulate commerce extended; in this, it was the territory of New York over which that State possesses an acknowledged and undisputed jurisdiction for every purpose of internal regulation: in that the subject matter on which it operated was a vessel claiming the right of navigation, a right which the court say is embraced in the power to regulate commerce; in this the subjects on which it operates are persons whose rights and duties are rightfully prescribed and controlled by the laws of the respective States within whose territorial limits they are found; in that, say the court, the act of a State came into direct collision with an act of the United States; in this no such collision exists.

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"In this case (that is *Brown* v. *State of Maryland*) it will be seen that the discussion of the court had reference to the extent of the power given to Congress to regulate commerce, and to the extent of the prohibition upon the States from imposing any duty upon imports. Now, it is difficult to perceive what analogy there can be between a case where the right of the State was inquired into, in relation to a tax imposed upon the sale of imported goods, and one where, as in this case, the inquiry is as to its right over persons within its acknowledged jurisdiction; the goods are the subject of commerce, the persons are not: the court did indeed extend the power to regulate commerce, so as to protect the goods imported from a State tax after they were landed, and were yet in bulk, but why? Because they were the subjects of commerce, and because, as the power to regulate commerce under which the importation was made implied a right to sell, that right was complete without paying the State for a second right to sell, whilst the bales or packages were in their original form. But how can this apply to persons? They are not the subject of commerce; and, not being imported goods, cannot fall within a train of reasoning founded upon the construction of a power given to Congress to regulate commerce, and the prohibition to the States from imposing a duty on imported goods.

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"From this it appears that whilst a State is acting within the legitimate scope of its power as

to the end to be attained, it may use whatsoever means, being appropriate to that end, it may think fit; although they may be the same, or so nearly the same, as scarcely to be distinguishable from those adopted by Congress acting under a different power; subject only, say the court, to this limitation, that in the event of collision, the law of the State must yield to the law of Congress. The court must be understood, of course, as meaning that the law of Congress is passed upon a subject within the sphere of its power.

"Even then, if the section of the act in question could be considered as partaking of the nature of a commercial regulation, the principle here laid down would save it from condemnation, if no such collision exist."

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In referring to the Act of Congress of 1819, the court said:

"The object of this clause, in all probability, was to enable the government of the United States to form an accurate estimate of the increase of population by immigration; but whatsoever may have been its purpose, it is obvious that these laws only affect, through the power over navigation, the passengers whilst on their voyage, and until they shall have landed. After that, and when they have ceased to have any connection with the ship, and when, therefore, they have ceased to be passengers, we are satisfied that acts of Congress, applying to them as such, and only professing to legislate in relation to them as such,

have then performed their office, and can, with no propriety of language, be said, to come into conflict with the law of a State whose operation only begins when that of the laws of Congress ends; whose operation is not even on the same subject, because, although the person on whom it operates is the same, yet having ceased to be a passenger, he no longer stands in the only relation in which the laws of Congress either professed or intended to act upon him. * * * Therefore, if the State law were to be considered as partaking of the nature of a commercial regulation, it would stand the tests of the most rigid scrutiny, if tried by the standard laid down in the reasoning of the court, quoted from the case of *Gibbons* v. *Ogden*. But we do not place our opinion on this ground. We choose, rather, to plant ourselves on what we consider impregnable positions. They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That bv virtue of this, it is not only the right, but the bounden and solemn duty of a State to advance the safety, happiness and prosperity of its people, and to provide for its general welfare by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate

to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified and exclusive."

Again in the License Cases, 5 How. 504, decided in 1847, *Gibbons* v. *Ogden* was analyzed by this court. Certain laws of Massachusetts required that no person should be a retailer of or seller of wine, brandy, rum or other spirituous liquors in a less quantity than 28 gallons and that delivered and carried away all at one time unless he were first licensed as a retailer of wine and spirits by the county authorities wherein the business was undertaken to be carried on. Another law of Rhode Island forbade the sale of certain spirits in a less quantity than ten gallons, although Fletcher, the party indicted, had bought the liquor from an importer who had imported it from France. Another law of New Hampshire imposed similar restrictions, although in the New Hampshire case Pierce, the party indicted, sold a barrel of American gin purchased in Boston and carried coastwise to Piscataqua Bridge and there sold in the same barrel. There were three of these cases which were argued together and decided under the title of the "License Cases." The court held that the State laws were not inconsistent with any provision of the Constitution.

Mr. Chief Justice Taney in passing on the question involved spoke as follows:

"First: to *Gibbons* v. *Ogden,* because this is the case usually relied on to prove the exclusive power of Congress and the prohibition to the

States. It is true that one or two passages in that opinion, taken by themselves, and detached from the context, would seem to countenance this doctrine; and, indeed, it has always appeared to me that this controversy has mainly arisen out of that case, and that this doctrine of the exclusive power of Congress, in the sense in which it is now contended for, is comparatively a modern one, and was never seriously put forward in any case until after the decision of *Gibbons* v. *Ogden*, although it has been abundantly discussed since. Still, it seems to me to be clear, upon a careful examination of that case, that the expressions referred to do not warrant the inference drawn from them, and were not used in the sense imputed to them; and that the opinion in that case, when taken altogether, and with reference to the subject matter before the court, establishes the doctrine that a State may in the execution of its powers of internal police, make regulations of foreign commerce; and that such regulations are valid, unless they come into collision with a law of Congress. Upon examining that opinion, it will be seen that the court, when it uses the expressions which are supposed to countenance the doctrine of exclusive power in Congress, is commenting upon the argument of counsel in favor of equal power on this subject in the States and the general government, where neither party is bound to yield to the other; and is drawing the distinction between cases of concurrent powers and those in which the supreme or paramount power was granted to Congress. It therefore very

justly speaks of the States as exercising their own powers in laying taxes for State purposes, although the same thing is taxed by Congress; and as exercising the powers granted to Congress when they make regulations of commerce. In the first place, the State power is concurrent with that of the general government—is equal to it, and is not bound to yield. In the second it is subordinate and subject to the superior and controlling power conferred upon Congress. And it is solely with reference to this distinction, and in the midst of this argument upon it, that the court uses the expressions which are supposed to maintain an absolute prohibition to the States. But it certainly did not mean to press the doctrine to that extent. For it does not decide the case on that ground (although it would have been abundantly sufficient, if the court had entertained the opinion imputed to it), but, after disposing of the argument which had been offered in favor of concurrent powers, it proceeds immediately, in a very full and elaborate argument, to show that there was a conflict between the law of New York and the act of Congress, and explicitly puts its decision upon that ground. Now, the whole of this part of the opinion would have been unnecessary and out of place, if the State law was of itself a violation of the Constitution of the United States, and therefore utterly null and void whether it did or did not come in conflict with the law of Congress.

"Moreover, the court distinctly admits, on pages 205, 206, that a State may, in the execu-

tion of its police and health laws, make regulations of commerce, but which Congress may control. It is very clear that so far as these regulations are merely internal, and do not operate on foreign commerce, or commerce among the States, they are altogether independent of the power of the general government, and cannot be controlled by it. The power of control, therefore, which the court speaks of, presupposes that they are regulations of foreign commerce or commerce among the States. And if a State, with a view to its police or health, may make valid regulations of commerce which yet fall within the controlling power of the general government, it follows that the State is not absolutely prohibited from making regulations of foreign commerce within its own territorial limits, provided they do not come in conflict with the laws of Congress.

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"It may be well, however, to remark that in analogous cases, where, by the Constitution of the United States, power over a particular subject is conferred on Congress without any prohibition to the States, the same rule of construction has prevailed. Thus, in the case of *Houston* v. *Moore* (5 Wheat. 1), it was held that the grant of power to the federal government to provide for organizing, arming and discipling the militia, did not preclude the States from legislating on the same subject, providing the law of the State was not repugnant to the law of Congress. And every State in the Union has continually legislated on the subject, and I am not aware that the validity

of these laws has ever been disputed, unless they came in conflict with the law of Congress.

"The same doctrine was held in the case of *Sturges* v. *Crowninshield* (4 Wheat. 196), under the clause in the Constitution which gives to Congress the power to establish uniform laws on the subject of bankruptcies throughout the United States."

All of the justices agreed in holding the laws in question constitutional; but Justices McLean, Catron, Daniel and Woodbury filed separate opinions. Mr. Justice McLean said that *Gibbons* v. *Ogden* decided that Congress was invested with power over commerce complete in itself and acknowledges no limitations except those prescribed by the Constitution. Mr. Justice Catron said that all that belonged to the commerce power, as distinguished from the police power, belonged to Congress and referred to *Gibbons* v. *Ogden*, *Brown* v. *Maryland* and *New York* v. *Miln*. Mr. Justice Daniel said that the doctrine of *Brown* v. *Maryland* had been gratuitously brought into the case and in speaking upon the commerce clause declared that "The commerce here spoken of is that traffic between the people of the United States and foreign nations, by which articles are procured by purchase or barter from abroad, or by which the like subjects of traffic are transmitted from the United States to foreign countries, etc." Mr. Justice Woodbury in considering the commerce clause invoked declared that "There is nothing in its nature, in several respects, to render it more exclusive than the other grants, but on the contrary much in its nature to permit and require the concurrent and auxiliary action

of the States." Mr. Justice Grier in his opinion and upon the point of the right of the States to prohibit the sales and consumption of an article believed to be pernicious in its effects declared "I do not consider the question of the exclusiveness of the power of Congress to regulate commerce as necessarily connected with the decision of this point." So that we infer from their silence that Justices Wayne, McKinley and Nelson concurred in all particulars with the Chief Justice. While it conclusively appears that the opinion of Mr. Justice Daniel, Woodbury and Grier are practically, by express language, or by holding the point of those cases not involved, with Mr. Chief Justice Taney in his references to *Gibbons* v. *Ogden* and *Brown* v. *Maryland*.

The case of *Gibbons* v. *Ogden* as an authority bearing upon the exclusive power in Congress to regulate commerce with foreign nations, and the definition of commerce as including traffic and intercourse so as to permit Congress to pass exclusion acts under the Commerce clause, grow more indistinct in the cases decided by this court after the Passenger Cases. We find that the reasoning in some cases rests upon the mere assertion that Congress has power to pass exclusion acts under the Commerce clause. Then, that succeeding cases refer to these assertions. Until finally the principle seems to be lost in a declaration that the United States are sovereign, that they are a nation, and that as a sovereign government and as a nation they have power to exclude aliens from their shores for a good reason or for a bad reason.

In the Passenger Cases, decided in 1849, there came

before the court for consideration certain statutes of the States of New York and Massachusetts, imposing taxes upon alien passengers arriving in the ports of those States. The Passenger Cases consisted of the case of *Smith* v. *Turner*, Health Commissioner of the Port of New York, and *Norris* v. *The City of Boston*. There was no opinion of the court as a court. The report of the case consists merely of the opinion of the judges. The opinion filed by Mr. Justice McLean, so far as it held that the laws in question were unconstitutional and void was also concurred in by Mr. Justice Catron, Mr. Justice McKinley and Mr. Justice Grier. Scattered through the individual opinions of the various judges are a variety of references to different principles urged against the constitutionality of the laws then in question. For instance, Mr. Justice McLean, who delivered an opinion in the case of *Smith* v. *Turner*, held, referring to *Gibbons* v. *Ogden*, and *Brown* v. *Maryland*, that Congress has exclusive power to regulate commerce with foreign nations; that commerce is not only an exchange of commodities but includes navigation and intercourse and the regulation of vessels used in transporting men. Mr. Chief Justice Taney dissented from the holding that the laws were unconstitutional, and held that the case of *Mayor of New York* v. *Miln*, already referred to, was controlling and decisive of one of the points raised. Mr. Justice Woodbury, Mr. Justice Daniel and Mr. Justice Nelson also dissented.

In the case of *Henderson* v. *Mayor*, 92 U. S., page 259, decided in 1875, a bill was filed to enjoin the Commissioner of Immigration from executing a New York law requiring the owners of vessels to pay three

hundred dollars for each passenger landed, who intended to pass through New York to other States. It was claimed that the law was repugnant to the clause of the Constitution, which empowers Congress to regulate commerce with foreign nations and among the several States. And also that it was contrary to that clause of the Constitution, which provides no State shall lay any impost. The decision of the court is predicated upon the definition of commerce, as given in *Gibbons* v. *Ogden*. The court used this language:

> "Whatever subjects of this power are in their nature national, or admit of one uniform system or plan of regulation, may be justly said to be of such a nature as to require exclusive legislation by Congress." (This must mean, of course, whatever subjects are committed to Congress for regulation.)

The power here referred to was the power to regulate commerce. But it is perceived that the doctrine here announced merges into the doctrine that the power to regulate immigration is deduced from the sovereign character of the general government. Because, if Congress has the exclusive control over the regulation of commerce, and if the regulation of immigration is included in the regulation of commerce, it is immaterial whether the regulation of immigration is in its nature national, or in its nature local. The court proceeded to say in this case, that it was not required to consider at what time after his arrival the passenger himself passes from the sole protection of the Constitution and becomes subject to the juris-

diction of the State. Because the tax began to run when the passenger took passage in a foreign port, and because also the portion of the statute under consideration by the court related to the ship owner. It is barely possible that the court had in mind the language of Mr. Justice Grier in the Passenger Cases already referred to, and where he said:

> "It therefore follows that passengers can never be subject to State laws until they become a portion of the population of the State temporarily or permanently."

This language of Mr. Justice Grier plainly recognizes the rule that an immigrant becomes a portion of the population of the State and subject to its laws and jurisdiction at some time.

In 1875, the case of *Chy Lung* v. *Freeman*, 92 U. S., page 275, was decided. The case related to a statute of California, which was passed with the obvious purpose of keeping out of the territory of that State persons who should come from foreign countries, who were lunatics, idiots, criminals or prostitutes. The act was held unconstitutional, because, as the court said:

> "The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belong to Congress."

The power in Congress to regulate such immigration was predicated upon the commerce clause of the Constitution. As to this case the power in Congress to regulate commerce does not preclude, according to many later decisions of this court, the exercise of the

power to regulate commerce by the States. We conceive that State laws regulating immigration cannot, under the most authoritative decisions of this court, be invalidated simply upon the ground that Congress has power to regulate commerce. The proposition must either be, that Congress has exclusive power to regulate commerce, or else Congress must already have exercised its power with reference to the particular subject of commerce. Upon this proposition the case of *Black Bird Creek Marsh Company* v. *Wilson*, already referred to and decided by Mr. Chief Justice Marshall, is in point, and we desire to submit the following authorities upon the same subject.

In the case of *Holmes* v. *Jennison* et al., 14 Peters 538, the opinion of Mr. Justice Barbour contains this language:

> "The second class of constitutional provisions, as to which this question of repugnancy may arise, consists of those powers granted to the federal government, which the States previously possessed; where there is nothing in the terms of the grant which imports exclusion, and where there is no express prohibition upon the States.
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> "As to this class of powers, the great constitutional problem to be solved is, whether any of them can be construed as being exclusive. If they can, then the necessary consequence is that the States cannot exercise them, whether the federal government shall or shall not think proper to execute them. If, on the contrary, they are not exclusive but concurrent, then the States may rightfully exercise them; and no question of

repugnancy can ever rise whilst the power remains dormant and unexecuted by the federal government. Such a question can only occur when the actual exercise of such a power by the States comes into direct conflict with the actual exercise of the same power by the federal government. This characteristic of concurrent powers is illustrated by the familiar example of the power of taxation. Thus, although the power of laying and collecting taxes is specifically granted to Congress, yet the States, as we all know are in the habitual exercise of the same power over the same people, and the same objects of taxation and at the same time, as the federal government; except when the States are restrained by an express prohibition from acting upon particular objects; that is, from laying any imposts or duties on imports or exports, beyond what may be absolutely necessary for executing their inspection laws. And but for that prohibition I doubt not but that the States would have had as much power to lay imposts or duties on imports or exports as to impose a tax on any other subject of taxation.

"I hold the following proposition to be maintainable: That wherever a power, such as the States originally possessed, has been granted to the federal government, and the terms of the grant do not import exclusion, and there is no express prohibition upon the States, and the power granted to the federal government is dormant and unexecuted; there the States still retain power to act upon the subject. And I place

this upon the ground that in such a case the question of repugnancy cannot occur, until the power is executed by the federal government. It is not repugnant to the Constitution, because there is not in that instrument either an express prohibition, nor that which is implied by necessary construction arising from words of exclusion. There is, therefore, nothing in the Constitution itself, operating by itself, as it does in cases of express prohibition or terms of exclusion, to which the exercise of such a power by the States is repugnant, or with which it is utterly incompatible. It is not repugnant to any law passed or treaty made by the United States, because my proposition in terms assumes that no such law has been passed or treaty made."

In the case of *Ex parte McNeil*, 13 Wall. 236, decided in 1871, the opinion of Mr. Justice Swayne in passing upon the pilot laws of New York said:

"But, conceding that this provision is a regulation of commerce and within the power of Congress upon that subject, it by no means follows that it involves the constitutional conflict insisted upon by the counsel for the petitioner. In the complex system of polity which prevails in this country the powers of government may be divided into four classes:

"Those which belong exclusively to the States.

"Those which belong exclusively to the National Government.

"Those which may be exercised concurrently and independently by both.

> "Those which may be exercised by the States but only until Congress shall see fit to act upon the subject. The authority of the State then retires and lies in abeyance until the occasion for its exercise shall recur."

In *Osborne* v. *Mayor, etc., of Mobile,* 83 U. S. 483, decided in 1872, Mr. Chief Justice Chase said:

> "It is to be observed that Congress has never undertaken to exercise this power in any manner inconsistent with the municipal ordinance under consideration, and there are several cases in which the court has asserted the right of the State to legislate in the absence of legislation by Congress, upon subjects over which the Constitution has clothed that body with legislative authority. *License Cases,* 5 How. 504; *Wilson* v. *Black Bird C. M. Co.,* 2 Pet. 245; *Cooley* v. *Board of Wardens,* 12 How. 315."

In *Missouri K. & T. R. Co.* v. *Haber,* 169 U. S. 627, decided in 1897, the opinion of Mr. Justice Harlan contains this language:

> "Although the power of Congress to regulate commerce among the States, and the power of the States to regulate their purely domestic affairs, are distinct powers, which, in their application, may at times bear upon the same subject, no collision that would disturb the harmony of the National and State governments, or produce any conflict between the two governments in the exercise of their respective powers, need occur, unless the National government, acting within

> the limits of its constitutional authority, takes under its immediate control and exclusive supervision the entire subject to which the State legislation may refer."

In the case of *Robertson* v. *Baldwin*, 165 U. S. 273, there was presented for decision the validity of an act of Congress conferring upon State officers the power to arrest deserting seamen and to deliver them on board their vessel. Mr. Justice Harlan in dissenting used this language:

> "Can the decision of the court be sustained under the clause of the Constitution granting power to Congress to regulate commerce with foreign nations and among the several States? That power cannot be exerted except with regard to other provisions of the Constitution, particularly those embodying the fundamental guaranties of life, liberty and property. While Congress may enact regulations for the conduct of commerce with foreign nations and among the States, and may, perhaps, prescribe punishment for the violation of such regulations, it may not, in so doing, ignore other clauses of the Constitution. For instance, a regulation of commerce cannot be sustained, which, in disregard of the express injunction of the Constitution, imposes a cruel and unusual punishment for its violation, or compels a person to testify in a criminal case against himself, or authorizes him to be put twice in jeopardy of life or limb, or denies to the accused the privilege of being confronted with the witnesses against him, or of being informed

> of the nature and cause of the accusation against him. And it is equally clear that no regulation of commerce established by Congress can stand if its necessary operation be either to establish slavery or to create a condition of involuntary servitude forbidden by the Constitution."

And so it may be said, in passing, that if the power to regulate commerce is to be construed as acknowledging no limitation except those expressed in the Constitution and that this is to mean that the regulation may be coupled with any power, or such power as is given in the Act of 1903, the provisions of the Constitution relating to the protection of life, liberty and property, to jury trial and to all the accompaniments of a judicial trial as known in our system and developed by the awful struggles of the past, amount to nothing. Upon what principle is the power to regulate commerce held to be paramount to the securities of liberty mentioned in the Constitution? Why is one portion of the Constitution more binding than another?

But as bearing upon the vicious characteristics of the present exclusion law, the language of Mr. Justice Miller, who delivered the opinion of the court in the case of *Chy Lung* v. *Freeman*, is most pertinent: Evil administration of the law is equally such whether resorted to by the State or by the general government.

> "Individual foreigners, however distinguished at home for their social, their literary or their political character, are helpless in the presence of this potent commissioner. Such a person may

offer to furnish any amount of surety on his own bond, or deposit any sum of money; but the law of California takes no note of him. It is the master, owner or consignee of the vessel alone whose bond can be accepted; and so a silly, an obstinate, or a wicked commissioner may bring disgrace upon the whole country, the enmity of a powerful nation, or the loss of an equally powerful friend.

* * * * * * * * * * *

"The patriot, seeking our shores after an unsuccessful struggle against despotism in Europe or Asia, may be kept out, because there his resistance has been judged a crime. The woman whose error has been repaired by a marriage and numerous children, and whose loving husband brings her with his wealth to his new home, may be told she must pay a round sum before she can land, because it is alleged she was debauched by her husband before marriage. Whether a young woman's manners are such as to justify the commissioner in calling her lewd may be made to depend on the sum she will pay for the privilege of landing in San Francisco."

But is such administration of the law and such practice any less reprehensible because done by the general government instead of by a State government?

Again in the case of *The People of the State of New York* v. *Compagne Generale Trans-Atlantique*, 107 U. S., page 383, decided in 1882, there came before the consideration of this court certain

inspection laws, which had been passed by the State of New York. The law in question which had been passed May 31, 1881, imposed a tax on every passenger from a foreign country landing in the port of New York, who should not be a citizen of the United States, and held the vessel, which brought such person, liable for the tax. The court went on to say in answer to the point made by counsel for the law, that the tax was an exercise of the inspection power of the State, that no inspection law, from the time of the formation of the Constitution, has included anything but personal property as a subject of its operation. "What is inspection?" asked the court. "Something which can be accomplished by looking at or weighing or measuring the thing to be inspected, or applying to it at once some crucial test. When testimony or evidence is to be taken and examined it is not inspection in any sense whatever." Then, as regards the other points made in the case, the court used the following language:

> "This act empowers and directs the commissioners of immigration 'to inspect the persons and effects of all persons arriving by vessel at the Port of New York from any foreign country, as far as may be necessary, to ascertain who among them are habitual criminals, or pauper lunatics, idiots or imbeciles, or deaf, dumb, blind, infirm, or orphan persons, without means or capacity to support themselves and subject to become a public charge, and whether their persons or effects are affected with any infectious or contagious

disease, and whether their effects contain any criminal implements or contrivances.'

* * * * * * * * * * *

"We feel quite safe in saying, that neither at the time of the formation of the Constitution nor since has any inspection law included anything but personal property as a subject of its operation. Nor has it ever been held that the words, imports and exports, are used in that instrument as applicable to free human beings by any competent judicial authority. We know of nothing which can be exported from one country or imported into another that is not in some sense property; property in regard to which some one is owner, and is either the importer or the exporter.

"This cannot apply to a free man. Of him it is never said he imports himself, or his wife or his children.

"The language of Section 9, Article 1, of the Constitution which is relied on by counsel, does not establish a different construction:

" 'The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.'

"There has never been any doubt that this clause had exclusive reference to persons of the African race. The two words 'migration' and 'importation' refer to the different conditions of

this race as regards freedom and slavery. When the free black man came here he migrated; when the slave came he was imported; the latter was property and was imported by his owner as other property, and a duty could be imposed on him as an import. We conclude that free human beings are not imports or exports within the meaning of the Constitution.

"In addition to what is said above, it is apparent that the object of these New York enactments goes far beyond any correct view of the purpose of an inspectoin law. The commissioners are 'To inspect all persons arriving from any foreign country, to ascertain who among them are habitual criminals or paupers, idiots or imbeciles * * * or orphan persons without means or capacity to support themselves and subject to become a public charge.'

"It may safely be said that these are matters incapable of being satisfactorily ascertained by inspection.

"What is an inspection? Something which can be accomplished by looking at or weighing or measuring the thing to be inspected, or applying to it at once some crucial test. When testimony or evidence is to be taken and examined, it is not inspection in any sense whatever."

In the case of *Eyde* v. *Robertson*, 112 U. S., page 580, decided in 1884, the validity of the act of Congress passed August 3rd, 1882, Vol. 22 Statutes at Large, page 214, entitled "An Act to Regulate Immigration," came before this court for consideration. This case was considered with some others, and is

known as the Head Money cases. A suit was brought by Eyde to recover from Robertson, the collector of the port of New York, a certain sum of money, which had been paid to him on account of the landing of the plaintiff in that port as a passenger from a foreign port, Eyde not being a citizen of the United States. The court referred to the Passenger cases, *Henderson* v. *The Mayor, Chy Lung* v. *Freeman,* and *The People of New York* v. *Compagne Generale Trans-Atlantique,* and added, that those cases held that Congress has power to regulate commerce with foreign nations.

> "It cannot be said," said the Court, "that these cases do not govern the present, though there was not then before us any act of Congress whose validity was in question, for the decisions rest upon the ground that the state statutes were void only because Congress and not the states were authorized by the Constitution to pass them, and for the reason that Congress could enact such laws, and for that reason alone were the acts of the state held void. It was therefore, of the essence of the decision which held the state statutes invalid that a similar statute by Congress would be valid."

So that, out of the invalidation of state statutes upon this subject, upon the ground that Congress has power to regulate commerce with foreign nations, although there were no federal statutes upon the subject at the same time and in the face of other decisions of the Court going to the point that the regulation of commerce may be concurrent with the states, grew the decision in the Head Money cases. The lineage

of the Head Money cases may be traced through those decisions which invalidated state stautes, and these cases which invalidated state statutes may be traced to *Gibbons* v. *Ogden*, and yet as before seen, the case of *Gibbons* v. *Ogden* in its most extensive definition of commerce does not include the regulation of immigration, nor is there anything in *Gibbons* v. *Ogden* to show that in the absence of a federal statute a state statute cannot exist, which does regulate immigration.

Exclusion decisions based upon the doctrine of sovereignty: The *Chinese Exclusion Case*, 130 U. S., 581; *Ekin* v. *U. S.*, 651; *Fong Yue Ting* v. *U. S.*, 149 U. S., 698, and *Lees* v. *U. S.*, 150 U. S., 474, we regard as resting upon palpable fallacies. In *Ekin* v. *U. S.* the court held the regulation of commerce "includes the bringing of persons into the ports of the United States." Now it would seem that this is the very thing to be proven. It might be said with equal force that the subject of immigration comes under some other power. But whether it does or not, rests in proof, or deduction by a fair train of reasoning from the granted power. We candidly submit that no clearer example of a *petitio principii* can be given than to assume that Congress may regulate immigration because it may regulate commerce and that the regulation of commerce includes the regulation of immigration. The argument ends where it began and proceeds not a step beyond its starting point.

The other cases just noted predicate the regulation of immigration upon a different basis. Thus in the Chinese Exclusion Cases it was held that the United

States have jurisdiction over their own territory. True, but to what extent? Then it was said, that if aliens could not be excluded the government would be to that extent subject to the control of another power. But what of that, if Congress has no power over immigration, which is the very thing to be determined? Then it was said that the United States are a nation. But what sort of a nation? Can anything be predicated of the United States as a nation which may be predicated of Russia as a nation? If not, does the mere predication that the United States are a nation warrant the deduction that they may exclude aliens. Then it was said that the power to expel is an attribute of a sovereignty. But sovereignty is a term of varying significance. Sovereignty may be plenary or limited; it may inhere in its whole extent in a legislative body; or a legislative body may have mere sovereign powers delegated by the sovereign power. So it was said in *Ekin* v. *U. S.* that every sovereign nation has the power inhering in sovereignty to exclude aliens. In *Fong Yue Ting* v. *U. S.* it was said that every nation has the right to refuse admission to foreigners, and in *Lees* v. *U. S.* it was said that the power of Congress to exclude aliens is ample. As the doctrine of sovereignty in reference to the subject of exclusion is nowhere more fully stated than in the case of *Fong Yue Ting* v. *U. S.*, we desire to quote from the opinion of the Court and the opinions of the justices who dissented as preparatory to the concluding part of the argument on this branch of the case.

Mr. Justice Gray, who delivered the opinion of the Court, said:

"The right to exclude or to expel all aliens, or any class of aliens, absolutely, or upon certain conditions, in war or in peace, being an inherent and inalienable right of every sovereign and independent nation, essential to its safety, its independence and its welfare, the question now before the court is whether the manner in which Congress has exercised this right in sections 6 and 7 of the Act of 1892 is consistent with the Constitution. * * * The Constitution has granted to Congress the power to regulate commerce with foreign nations including the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States; to establish a uniform rule of naturalization, to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; to raise and support armies, to provide and maintain a navy and to make rules for the government and regulation of the land and naval forces; and to make all laws necessary and proper for carrying into execution these powers, and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof. And the several states are expressly forbidden to enter into any treaty, alliance or confederation; to grant letters of marque and reprisal; to enter into any agreement or compact with another State, or with a foreign power; or to engage in war,

unless actually invaded, or in such imminent danger as will not admit of delay."

Mr. Justice Brewer, in dissenting said:

"I rest my dissent on three propositions: First, that the persons against whom the penalties of section 6 of the Act of 1892 are directed are persons lawfully residing within the United States; secondly, that as such they are within the protection of the Constitution, and secured by its guarantees against oppression and wrong; and, third, that section 6 deprives them of liberty and imposes punishment without due process of law, and in disregard of constitutional guaranties, especially those found in the 4th, 5th, 6th and 8th articles of the Amendments. * * *

"Now, the power to remove resident aliens is, confessedly, not expressed. Even if it be among the powers implied, yet still it can be exercised only in subordination to the limitations and restrictions imposed by the constitution. In the case of *Monongahela Nav. Co.* v. *United States*, 149 U. S., p. 463, it was said: 'But like the other powers granted to Congress by the constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, and among them is that of the 5th Amendment we have heretofore quoted. Congress has supreme control over the regulation of commerce; but if, in exercising that supreme control, it deems it necessary to take private property, then it must proceed subject to the limitations imposed by this 5th Amendment, and can take only on payment

of just compensation.' And if that be true of the powers expressly granted, it must as certainly be true of those that are only granted by implication.

"When the first ten Amendments were presented for adoption, they were preceded by a preamble stating that the conventions of many states had at the time of their adopting the constitution expressed a desire, 'in order to prevent misconception or abuse of its powers, the further declaratory and restrictive clauses should be added.' It is worthy of notice that in them the word 'citizen' is not found. In some of them the descriptive word is 'people,' but in the 5th it is broader and the word is 'person', and in the 6th it is the 'accused', while in the 3rd, 7th and 8th there is no limitation as to the beneficiaries suggested by any descriptive word.

"In the case of *Yick Wo* v. *Hopkins*, 118 U. S., 356, it was said: 'The 14th Amendment of the Constitution is not confined to the protection of citizens. It says: "Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any difference of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.' " * * *

"If the use of the word 'person' in the 14th Amendment protects all individuals lawfully

within the State, the use of the same word 'person' in the 5th must be equally comprehensive, and secures to all persons lawfully within the territory of the United States the protection named therein; and a like conclusion must follow as to the 6th." * * *

"Deportation is punishment. It involves first an arrest, a deprival of liberty; and, second, a removal from home, from family, from business, from property. In 1. Rapalje & Lawrence's Law Dictionary, p. 109, 'Banishment' is thus defined: 'A punishment by forced exile, either for years or for life; inflicted principally upon political offenders, "transportation" being the word used to express a similar punishment of ordinary criminals.' In 4 Blackstone, 377, it is said: 'Some punishments consist in exile or banishment, by abjuration of the realm, or transportation.' In Vattel we find that 'banishment is only applied to condemnation in due course of law.' 1 Vattel's Law of Nations, Section 288, note.

"But it needs no citation of authorities to support the proposition that deportation is punishment. Everyone knows that to be forcibly taken away from home and family, and friends, and business, and property, and sent across the ocean to a distant land, is punishment; and that oftentimes most severe and cruel. Apt and just are the words of one of the framers of this Constitution, President Madison, when he says (4 Elliot, Deb. 555): 'If the banishment of an alien from a country into which he has been invited as the asylum most auspicious to his happiness—a

country where he may have formed the most tender connections; where he may have invested his entire property, and acquired property of the real and permanent, as well as the movable and temporary kind; where he enjoys under the laws a greater share of the blessings of personal security and personal liberty than he can elsewhere hope for; if, moreover, in the execution of the sentence against him, he is to be exposed, not only to the ordinary dangers of the sea, but to the peculiar casualties incident to a crisis of war and of unusual licentiousness on that element, and possibly to vindictive purposes, which his immigration itself may have provoked—if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied.'

"But punishment implies a trial: 'No person shall be deprived of life, liberty or property without due process of law.' Due process requires that a man be heard before he is condemned, and both heard and condemned in the due and orderly procedure of a trial as recognized by the common law from time immemorial. It was said in this court in *Hagar* v. *Reclamation Dist. No.* 108, 111 U. S., 701: 'Undoubtedly where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard.' * * *

"Again, it is absolutely within the discretion of the collector to give or refuse a certificate to

one who applies therefor. Nowhere is it provided what evidence shall be furnished to the collector, and nowhere is it made mandatory upon him to grant a certificate on the production of such evidence. It cannot be due process of law to impose punishment on any person for failing to have that in his possession, the possession of which he can obtain only at the arbitrary and unregulated discretion of any official. It will not do to say that the presumption is that the official will act reasonably and not arbitrarily. When the right to liberty and residence is involved, some other protection than the mere discretion of any official is required. Well was it said by Mr. Justice Matthews in the case of *Yick Wo* v. *Hopkins*, 118 U. S., 369: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' "

Mr. Chief Justice Fuller in dissenting, used this language:

"I entertain no doubt that the provisions of 5th and 14th Amendments, which forbid that any person shall be deprived of life, liberty or property, without due process of law, are, in the language of Mr. Justice Matthews, already quoted by my brother Brewer, 'universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color

or of nationality,' and although in *Yick Wo* v. *Hopkins,* 118 U. S., 366, only the validity of a municipal ordinance was involved, the rule laid down as much applies to Congress under the 5th Amendment as to the States under the 14th. The right to remain in the United States in the enjoyment of all the rights, privileges, immunities, and exemptions accorded to the citizens and subjects of the most favored nation, is a valuable right, and certainly a right which cannot be taken away without taking away the liberty of its possessor. This cannot be done by mere legislation."

The sovereignty invoked as warranting the enactment of exclusion laws differs in no degree from that sovereignty which was alleged to inhere in Queen Elizabeth by the Court lawyers of her day. Concerning this Mr. Hallam in his work, The Constitutional History of England, wrote:

"There was, unfortunately, a notion very prevalent in the cabinet of Elizabeth, though it was not quite so broadly, or at least so frequently promulgated as in the following reigns, that besides the common prerogatives of the English crown, which were admitted to have legal bounds, there was a kind of paramount sovereignty which they denominated her absolute power, incident, as they pretended, to the abstract nature of sovereignty, and arising out of the primary office of preserving the State from destruction. This seemed analogous to the dictatorial power which might be said to reside in the Roman senate, since it could confer it upon an individual. And we

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all must in fact admit that self-preservation is the first necessity of commonwealths as well as persons, which may justify, in Montesquieu's poetical language, the veiling of the statutes of liberty. Thus martial law is proclaimed during an invasion, and houses are destroyed in expectation of a seige, but few governments *are to be trusted with this insidious plea of necessity which more often means their own security than that of the people;* nor do I conceive that the ministers of Elizabeth restrained this pretended power even in theory to such cases of overbearing exigency. It was the misfortune of the 16th century to see kingly power strained to the highest pitch in the two principal European monarchies. Charles V. and Philip II. had crushed and trampled the ancient liberty of Castile and Arragon. Francis I. and his successors, who found the work nearly done to their hands, had inflicted every practical oppression on their subjects. These examples could not be without their effect on governments so unceasingly attentive to all that passed on the stage of Europe: nor was this effect confined to the court of Elizabeth. *A king of England in the presence of absolute sovereigns, or perhaps of their ambassadors, must always feel some degree of that humiliation with which a young man in check of a prudent father regards the careless prodigality of the rich heirs with whom he associates."*

Is not this last sentence in line with certain declarations heard in these days that the United States are sovereign as other nations are sovereign? Do they

not proceed from the same source of humiliation? But in this case it is false humiliation and ignores the principles of liberty which prompted the limitations upon Congressional power.

But let us plant our feet upon authoritative definitions of a nation and of sovereignty and then consider where it resides under our system and where it devolved after the revolution and to what extent its powers were conferred upon the general government.

> "A nation or a state is, as has been said at the beginning of this work, a body politic, or a society of men united together for the purpose of promoting their mutual safety and advantage by their combined strength.
>
> From the very design that induces a number of men to form a society which has its common interests, and which is to act in concert, it is necessary that there should be established a PUBLIC AUTHORITY, to order and direct what is to be done by each in relation to the end of the association. This political authority is the *sovereignty;* and he or they who are invested with it are the SOVEREIGN. (10.)
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> * * * * * * * * * * *
>
> If the body of the nation *keep in its own hands* the empire, or the right to command, it is a POPULAR government, a DEMOCRACY; if it intrust it to a *certain number of citizens,* to a senate, it establishes an ARISTOCRATIC republic; finally, if it confide the government to a *single person,* the state becomes a monarchy. Vattel's Law of Nations, Cap. 1, p. 65.

"According to the fundamental principles of both federal and state constitutions, the government, the supreme power or *jura summi imperii*, resides in the people, and it follows that it is the right of the people to make laws. But as the exercise of that right by the people at large would be equally inconvenient and impracticable, the constitution reposes the exercise of that power in a body of representatives of the people, but at the same time imposes upon them such restrictions as are deemed important for the general welfare or for the protection of individual rights. Whenever this body of representatives exceed the limits prescribed to their action by the fundamental law from which their whole authority is derived, or whenever they exercise their powers in a manner which the people, by the constitution have not thought proper to allow, their action is not only censurable, but in point of law is void, and must not only be so declared by the courts where the point arises in litigation, but may be disregarded and disobeyed by any citizen. From this it will appear how broad is the difference between the constitution of Britain and those of the American states; the courts of the former country not venturing to declare that there are any legal limits to the legislative authority, except such as rest in the legislative will and discretion; while in America a considerable portion of the time of the courts is occupied with a discussion of questions respecting the constitutional limitations upon the power of the several departments of the government. See 1

Tucker's Blackstone, appendix A; Cooley's Const. Lim. cc. 1 and 7."

Cooley's Blackstone, Vol. 1, p. 49. (Footnote.)

In the case of the *Bank of Augusta* v. *Earle,* 13 Peters' Reports, p. 58, argued and determined in 1839, Mr. Webster used this language:

"In respect to this law of comity, it is said States are not Nations. They have no National sovereignty. A sort of residium of sovereignty is all that remains of them. National sovereignty it is said is conferred on this government, and part of the municipal sovereignty. The rest of the municipal sovereignty belongs to the States. Notwithstanding the respect which I entertain for the learned Judge who presided in that court, I cannot follow in the train of his argument. I can make no diagram such as this of the partition of National character between the state and general governments. I cannot map it out and say, so far is national and so far municipal, and here is the exact line where the one begins and the other ends. We have no second La Place and we never shall have, with his *mechanique politique,* able to define and describe the orbit of each sphere in our political system with such exact mathematical precision. There is no such thing as arranging these governments of ours by the laws of gravitation, so that they will be sure to go on forever without impinging. These institutions are practical, admirable, glorious, blessed creations. Still, they were, when created, experimental institutions, and if the convention

which framed the constitution of the United States had set down in it certain general definitions of power, such as had been alleged in the argument of this case, and stopped there, I verily believe, that in the course of the fifty years which have since elapsed, this government would never have gone into operation.

"Suppose that this constitution had said in terms, after the language of the court below, All national sovereignty shall belong to the United States, all municipal sovereignty to the several states. I will say that however clear, however distinct, such a definition may appear to those who use it, the employment of it in the constitution could only have led to utter confusion and uncertainty. I am not prepared to say that the states had no national sovereignty. The laws of some of the states, Maryland and Virginia, for instance, provide punishment for treason. The power which is exercised is certainly not municipal. Virginia has a law of alienage which is a power exercised against a foreign nation. Does not the question necessarily arise when power is exercised concerning an alien enemy, enemy to whom? The law of escheat which exists in also the exercise of a great sovereign power.

"The term sovereignty does not occur in the constitution at all. The constitution treats the states as states, and the United States as the United States; and by a careful enumeration declares all the powers that are granted to the United States, and all the rest are reserved to the States. If we pursue to the extreme point

the powers granted and the powers reserved, the powers of the general and state government will be found then to be impinging and not conflicting. Our hope is that the prudence and patriotism of the states and the wisdom of this government will prevent that catastrophe. For myself I will pursue the advice of the court in Deveaux's case; I will avoid nice metaphysical subtleties and all useless theories; I will keep my feet out of the traps of general definitions; I will keep things as they are, and go no further to inquire what they might be if they were not what they are. The states of this Union as states are subject to all the voluntary and customary laws of nations."

The court speaking through Mr. Chief Justice Taney in deciding this case used this language:

"But until this is done upon what grounds could this court refuse to administer the law of international comity between these states? They are sovereign states, and the history of the past and the events which are daily occurring offer the strongest evidence that they have adopted towards each other the laws of comity to their fullest extent."

In the Massachusetts convention which passed upon the Federal Constitution, Samuel Adams used this language:

"Your excellency's first proposition is that it be explicitly declared that all powers not expressly delegated to congress are reserved to the

several states to be by them exercised. This appears to my mind to be a summary of a bill of rights which gentlemen are anxious to obtain. It removes a doubt which many have entertained respecting the matter, and gives an assurance that if any law made by the federal government shall be extended beyond the power granted by the proposed constitution, and inconsistent with the constitution of this state, it will be an error, and adjudged by courts of law to be void. It is consonant with the second article in the present confederation that each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in congress assembled. I have long considered the watchfulness of the people over the conduct of their rulers the strongest guard against the encroachments of power, and I hope the people of this country will always be thus watchful."

Elliott's debates, Vol. 2, p. 131.

Whatever may be thought of Mr. Stephens' views on other subjects, no constitutional thinker has more clearly and conclusively discussed this subtle question of sovereignty. Not only that, but his doctrines are in line with the decisions of this court. He wrote:

"The whole subject has narrowed down to this: where in this country resides that power and authority that can rightfully make and unmake constitutions? In all confederated republics, ac-

cording to Montesquieu, Vattel and Burlamaqui, it remains with the sovereign states when confederated. Is our confederated republic an exception to this rule? If so, how does it appear? Is there anything in its history anterior to the present compact of union that shows it to be an exception? Certainly not; for the sovereignty of each state was expressly retained in the first articles of union. Is there, then, anything in the present compact itself that shows that it was surrendered by them in fact? If so, where is the clause bearing that import? None can be found. Again, if it was thereby surrendered, to whom did it pass? Did it pass to all the people of the United States? Of course not, for not one particle of power of any sort, much less sovereignty, is delegated in the constitution to the people of the United States. All powers therein delegated are to the states in their sovereign character under the designation of the United States.

"Is it then surrendered to the United States jointly? Certainly not, for one of the main objects in forming the compact, as before stated, and as clearly appears from the instrument itself, was to perpetuate separate state existence. The guaranty to this effect from the very words used implies their sovereignty. There can be no such thing as a perfect state without sovereignty. It certainly is not parted with by any express terms in that instrument. If it be surrendered thereby, it must be by implication only, but how can it be implied from any words or phrases in that instrument? If carried by implication, it must be on

the strange assumption that it is an incident only of some one or all of those specific and specially enumerated powers expressly delegated. This cannot be, as that would be making the incident greater than the object, the shadow more solid than the substance. For sovereignty is the highest and greatest of all political powers. It is itself the source as well as the embodiment of all political powers both great and small. All proceed and emanate from it. All the great powers specifically and expressly delegated in the constitution, such as the power to declare war and make peace, to raise and support armies, to tax and lay excise duties, are themselves but the incident of sovereignty. If this great embodiment of all powers was parted with, why were any minor specifications made? Why any enumeration? Was not such specifications or enumeration both useless and absurd? The bare fact that all powers parted with by states are delegated only, as all admit, necessarily implies that the greater power delegating still continued to exist."

Constitutional View of the War, Vol. 1. pp. 487, 488 and 489.

Again, in another place he wrote:

"The paramount authority in this country, sovereignty, that to which allegiance is due, is with the people somewhere. There is no sovereignty either in the general government or the state's governments. These are permitted to exercise certain civil powers so long only as it shall suit

> the sovereign will that they shall do so, and no longer. Sovereignty itself, from which emanates all political power, I repeat, resides with the people somewhere. And with what people? Why, of necessity, it appears to me, with the same people who delegated, whatever those powers the general government has ever been entrusted with."

Constitutional View of the War, Vol. 1, pp. 40 and 41.

We insist next that sovereignty devolved upon the states after the revolution.

In *Chisholm* v. *Georgia*, 2 Dallas, 470, decided in 1793, Mr. Chief Justice Jay said:

> "The revolution or rather the Declaration of Independence, found the people already united for general purposes, and at the same time providing for their more domestic concerns by state conventions, and other temporary arrangements. From the crown of Great Britain, the sovereignty of their country passed to the people of it; and it was then not an uncommon opinion, that the unappropriated lands, which belonged to that crown, passed not to the people of the colony or states within whose limits they were situated, but to the whole people; on whatever principles this opinion rested, it did not give way to the other, and thirteen sovereignties were considered as emerged from the principles of the revolution, combined with local convenience and considerations; the people nevertheless continued to con-

sider themselves, in a national point of view, as one people; and they continued without interruption to manage their national concerns accordingly; afterwards, in the hurry of the war, and in the warmth of mutual confidence, they made a confederation of the states, the basis of a general government. Experience disappointed the expectations they had formed from it; and then the people, in their collective and national capacity established the present constitution. It is remarkable that in establishing it, the people exercised their own rights, and their own proper sovereignty, and conscious of the plentitude of it, they declared with becoming dignity, 'We the people of the United States, do ordain and establish this constitution.' Here we see the people acting as sovereigns of the whole country; and in the language of sovereignty establishing a constitution by which it was their will, that the state governments should be bound, and to which the state constitutions should be made to conform. Every state constitution is a compact made by and between the citizens of a state to govern themselves in a certain manner; and the constitution of the United States is likewise a compact made by the people of the United States to govern themselves as to general objects, in a certain manner. By this great compact however, many prerogatives were transferred to the national government, such as those of making war and peace, contracting alliances, coining money, etc., etc."

In *Sturges* v. *Crowninshield*, 4 Wheat., 193, decided

in 1819, Mr. Chief Justice Marshall, who delivered the opinion of the court, said:

> "When the American people created a national legislature, with certain enumerative powers, it was neither necessary nor proper to define the powers retained by the states. *These powers proceed, not from the people of America, but from the people of the several states; and remain, after the adoption of the constitution, what they were before, except so far as they may be abridged by that instrument.* In some instances, as in making treaties, we find an express prohibition; and this shows the sense of the convention to have been, that the mere *grant of a power to Congress did not imply a prohibition on the States to exercise the same power.*"

In *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat., 651, decided in 1819, Mr. Chief Justice Marshall, who delivered the opinion of the court, said:

> "By the revolution, the duties, as well as the powers, of Government devolved on the People of New Hampshire. It is admitted, that among the latter was comprehended the transcendent power of parliament, as well as that of the executive department."

In *State of Rhode Island* v. *The State of Massachusetts*, 12 Peters, p. 720, decided in 1838, Mr. Justice Baldwin, who delivered the opinion of the court, said:

> "Before we can proceed in this cause, we must,

therefore, inquire whether we can hear and determine the matters in controversy between the parties, who are two States of this Union, sovereign within their respective boundaries, save that portion of power which they have granted to the Federal Government, and foreign to each other for all but Federal purposes. So they have been considered by this court through a long series of years and cases to the present term, during which, in the case of *The Bank of the United States* v. *Daniels*, this court has declared this to be a fundamental principle of the Constitution, and so we shall consider it in deciding on the present motion. (2 Peters, 590, 591.)

"Those States in their highest sovereign capacity, in the convention of the People thereof, on whom by the revolution the prerogative of the crown, and the transcendent power of parliament devolved, in a plenitude unimpaired by any act and controllable by no authority (6 Wheat., 651; 8 Wheat., 584, 588), adopted the Constitution by which they respectively made to the United States a grant of judicial power over controversies between two or more states."

In *Martin, et al.*, v. *The Lessee of Waddell*, 16 Peters, 410, decided in 1842, Mr. Chief Justice Taney, who delivered the opinion of the court, said:

"For when the Revolution took place the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soil under them for their own common use, subject only to

the rights since surrendered by the Constitution to the general government."

In *Martin* v. *Hunter's Lessee*, 1 Wheat., pp. 325, 326, decided in 1816, Mr. Justice Story, who delivered the opinion of the court, said:

> "On the other hand, it is perfectly clear that the sovereign powers vested in the State Governments, by their respective constitutions, remain unaltered and unimpaired, except so far as they were granted to the government of the United States.
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> * * * * * * * * * * *
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> "The government, then, of the United States, can claim no powers which are not granted to it by the constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication. On the other hand, this instrument, like every other grant, is to have a reasonable construction, according to the import of its terms; and where a power is expressly given in general terms, it is not to be restrained to particular cases, unless that construction grow out of the context expressly or by necessary implication. The words are to be taken in their natural and obvious sense, and not in a sense unreasonable, restricted or enlarged."

In *Fontain* v. *Ravenel*, 58 U. S., 369, decided in 1854, Mr. Chief Justice Taney, in concurring in the opinion of the court, said:

> "These prerogative powers which belong to the sovereign as *parens patriæ* remain with the

States. They may legalize charitable bequests within their own respective dominions, to the extent to which the law upon that subject has been carried in England; and they may require any tribunal of the State, which they think proper to select for that purpose, to establish such charities, and to carry them into execution. But State laws will not authorize the courts of the United States to exercise any power that is now in its nature judicial; nor can they confer on them the prerogative powers over minors, idiots, and lunatics, or charities, which the English Chancellor possesses."

But then what is the character of the general government with reference to sovereignty?

In *Marbury* v. *Madison,* 1 Cranch, 176, decided in 1803, Mr. Chief Justice Marshall, who delivered the opinion of the court, said:

"The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a

proposition too plain to be contested that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

* * * * * * * * * *

"Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution and see only the law.

"This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure."

In *McCulloch* v. *The State of Maryland, et al.*, 4 Wheat., 405, decided in 1818, Mr. Chief Justice Marshall, who delivered the opinion of the court, said:

"This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlight-

ened friends, while it was depending before the People, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist."

In *Wayman, et al.*, v. *Southard, et al.*, 10 Wheat., 43, decided in 1825, Mr. Chief Justice Marshall in delivering the opinion of the court again said:

> "Congress, at the introduction of the present government, was placed in a peculiar situation. A judicial system was to be prepared not for a *consolidated people* but for distinct societies, already possessing distinct systems, and accustomed to laws, which, though originating in the same great principles, had been variously modified."

In *Gilman* v. *Philadelphia*, 70 U. S., 713, decided in 1865, Mr. Justice Swayne in delivering the opinion of the court said:

> "The National Government possesses no powers but such as have been delegated to it. The States have all but such as they have surrendered. The power to authorize the building of bridges is not to be found in the Federal Constitution. It has not been taken from the States. It must reside somewhere. They had it before the Constitution was adopted, and they have it still. 'When the Revolution took place the people of each state became themselves sovereign; and in

that character hold the absolute right to all their navigable waters and the soil under them for their own common use, subject only to the rights since surrendered by the Constitution to the General Government.' *Martin* v. *Waddell,* 16 Pet., 410."

In *Pacific Insurance Company* v. *Soule,* 7 Wallace, 342, decided in 1868, Mr. Justice Swayne, speaking for the court, said:

"The National Government, though supreme within its own sphere, is one of limited jurisdiction and specific functions. It has no faculties but such as the Constitution has given it, either expressly or incidentally by necessary intendment. Whenever any act done under its authority is challenged, the proper sanction must be found in its charter, or the act is *ultra vires* and void."

In *Buffington* v. *Day,* 11 Wallace, 113, decided in 1870, Mr. Justice Nelson, speaking for the court, said:

"It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the state governments by their respective constitutions, remained unaltered and unimpaired except so far as they were granted to the Government of the United States. That the intention of the framers of the constitution in this respect might not be misundersood, this rule of interpretation, is expressly declared, in the 10th article of the amendments, namely: 'The powers not delegated to the United States are reserved to the States resepetively, or to the peo-

ple.' The Government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.

"The General Government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the States within the limits of their powers not granted, or, in the language of the 10th Amendment, 'reserved' are as independent of the General Government as that Government within its sphere is independent of the States."

In *United States* v. *Cruikshank,* 92 U. S., 542, decided in 1875, Mr. Chief Justice Waite, speaking for the court, said:

"The Government of the United States is one of delegated powers only. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the Constitution or laws of the United States, except such as the Government as the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States."

In *United States* v. *Harris,* 106 U. S., 629, decided

in 1882, Mr. Justice Woods, speaking for the court, said:

"We pass to the consideration of the merits of the case. Proper respect for a co-ordinate branch of the Government requires the courts of the United States to give effect to the presumption that Congress will pass no act not within its constitutional power. This presumption should prevail unless the lack of constitutional authority to pass an Act in question is clearly demonstrated. While conceding this, it must, nevertheless, be stated that the Government of the United States is one of delegated, limited and enumerated powers. *Martin* v. *Hunter*, I Wheat., 304; *McCulloch* v. *Maryland*, 4 Wheat, 316; *Gibbons* v. *Ogden*, 9 Wheat., 1. Therefore, every valid Act of Congress must find in the Constitution some warrant for its passage. This is apparent by reference to the following provisions of the Constitution: section 1, of the 1st article, declares that all legislative powers granted by the Constitution shall be vested in the Congress of the United States. Section 8, of the same article, enumerates the powers granted to the Congress, and concludes the enumeration with the grant of power. 'To make all laws which shall be necessary and proper to carry into execution the foregoing powers and all other powers vested in the Constitution in the Government of the United States or in any department or officer thereof.' Article X, of the Amendments to the Constitution declares that, 'The powers not delegated to the United States by the Constitution nor pro-

hibited by it to the States, are reserved to the States respecively or to the people.'

"Mr. Justice Story, in his Commentaries on the Constitution, says:

" 'Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an express power and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress cannot exercise it.' Section 1243, referring to Virginia Reports and Resolution January, 1800, pp. 33, 34; President Monroe's Exposition and Message of May 4, 1822, p. 47; 1 Tuck. Bl. Com. App., 287, 288; 5 Marsh. Wash. App., n. 3; 1 Hamilton's Works, 117, 121."

In *Yick Wo* v. *Hopkins*, 118 U. S., 356, decided in 1885, Mr. Justice Matthews, speaking for the court, said:

"When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, *while sovereign powers are delegated to the agencies of government, sovereignty itself re-*

mains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power."

In *Robertson* v. *Baldwin*, 165 U. S., 296, decided in 1896, Mr. Justice Harlan in a dissenting opinion said:

"Nor, I submit, is any light thrown upon the present question by the history of legislation in Great Britain about seamen. The powers of the British Parliament furnish no test for the powers that may be exercised by the Congress of the United States. Referring to the difficulties confronting the Convention of 1787, which framed the present Constitution of the United States, and to the profound differences between the instrument framed by it and what is called the British Constitution, Mr. Bryce, an English writer of high authority, says in his admirable work on the American Commonwealth: 'The British parliament has always been, was then, and remains now a sovereign and constituent assembly. It can make and unmake any and every law, change the form of government or the succession to the Crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers reside in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory it is the nation, being the historical successor of the Folk Moot of our Teutonic forefathers. Both practically and legally, it is to-

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day the only and the efficient depository of the authority of the nation, and is therefore, within the sphere of law, irresponsible and omnipotent.' Vol. 1, p. 32. No such powers have been given to or can be exercised by any legislative body organized under the American system. Absolute, arbitrary power exists nowhere in this free land. The authority for the exercise of power by the Congress of the United States must be found in the Constitution. Whatever it does in excess of the powers granted to it, or in violation of the injunctions of the supreme law of the land, is a nullity, and may be so treated by every person."

The argument then that the United States may exclude aliens because of their sovereign power, or because they are a nation, or because they have the powers of sovereign nations, is manifestly unsound. If sovereignty inheres in the people of the states; if the people of the states acting through the states granted to a general government certain incidents of sovereignty, it remains to be proven that the power to exclude aliens falls within the compass of some grant of sovereign power or agency. If the argument be reduced to a syllogism the fallacy may be easily detected by any one at all familiar with the subject. Suppose it be said:

All sovereign nations may exclude aliens. The United States are a sovereign nation. Therefore they may exclude aliens. This is a plain "fallacy of equivocation." For the term "sovereign nation" is used in two distinct senses. In the major premise it is used in the sense of a nation which in its executive or its legislative branch possesses the whole sovereign

power. In the minor premise the term can only refer to the United States as possessing those sovereign powers which have been granted to them by the organic law. In other words, as already seen, from the decisions of this court and other authorities, the United States possess limited sovereignty; or the sovereign power, the people, have only granted limited powers of sovereignty. Therefore while the above syllogism is formally correct it is materially fallacious, for the reason noted. These are what Bentham called "question begging epithets" which perpetually insist upon the sovereignty of the United States as warranting some particular law or policy.

> "At the head of these (fallacies of confusion) stands that multitudinous body of fallacious reasonings in which the source of error is the ambiguity of the term when something which is true of a word be used in a particular sense, is reasoned on as if it were true in another sense. * * * It occurs in ratiocination in two ways; when the middle term is ambiguous, or when one of the terms of the syllogism is taken in one sense in the premises and in another sense in the conclusion."

Mills Logic, Chap. VII.

So it was said by some of the earlier constitutional thinkers that if the constitution were a grant of sovereignty why did the constitution so carefully enumerate mere incidents of sovereignty as being in the grant? Why was Congress specifically given power to coin money, declare war, pass naturalization laws, regulate commerce, and do many other things which

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are the mere incidents of sovereign power, if the sovereign power itself were completely parted with by the constitution? It seems an act of supererogation to argue this question. Especially in view of the decisions just cited on the limited character of the general government. Yet what is meant when apart from the attempt to place the regulation of immigration under the commerce clause, it is asserted that this may be done by virtue of the sovereign power of the government, and by virtue of its power as a nation? Before then the commerce clause, or the argument of the sovereign character of the general government shall be used to abridge the freedom of speech and of the press, to interfere with the exercise of religion, to deny jury trial, and to transfer judicial power of appalling magnitude to the executive department, and in brief to strike down every canon of constitutional and historical liberty, a remembrance of what we are as a nation and a recurrence to fundamental principles may arrest the fatal act. How clear in history is the lineage of greatness! Those who put themselves on the side of liberty, some times though in a very humble way, have received the lasting benedictions of mankind. Those who put themselves on the side of expediency, on the side of power and glory, on the side of political mysticism may be remembered but not revered. They may find apologists, but neither friends nor adherents. The course of this world is toward the realization of perfect liberty. No conceivable catastrophe can destroy its march. For as long as men love life they will love all things that make life desirable. The press may be censored, but the ingenuity of mind will overleap the restrictions.

Public meetings may be dispersed, but their objects will find effect in some other way afterwards, if not through public meetings themselves. Whatever makes for the realization of man's betterment, speech, writing, agitation, petition will be resorted to in spite of all restrictions. Mankind lived through the middle ages. The world survived the despotism of Philip II., Louis XIV., Charles V. and James II. Yet nevertheless shall this republic plant itself in the way of progress? Shall it return to the tactics of those days? Has this country grown so arrogant in its power, so little in its greatness that it refuses men the right to speak, that it denies the principles of liberty? Rather we should say that anarchists are free to come to these shores and exploit their doctrines if they will; but the beneficient example of our system shall convince them that free government is preferable to anarchy.

No danger exists to this country from without. No danger exists to it from the agitation or even of the acts of Jacobites within it of whatever persuasion they may be. Wherever violence is resorted to by any one the proper authorities will not fail to do their duty. It is a poor compliment to the state government and entirely unmerited for the federal government directly or indirectly to assume to administer the criminal law. The danger which now confronts the people of this country is the aggression of government. The menace to the United States is the disregard of the fundamental law. For when free institutions are destroyed nothing of liberty remains. The preservation of this republic as a republic is the noblest mission that any man can have in this day.

We respectfully insist that for the foregoing rea-

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sons the law of March 3rd, 1903, should be held unconstitutional and that this appellant should be discharged from custody and relieved from the order of deportation. Respectfully submitted.

CLARENCE S. DARROW,
EDGAR L. MASTERS,
Attorneys for Appellant.



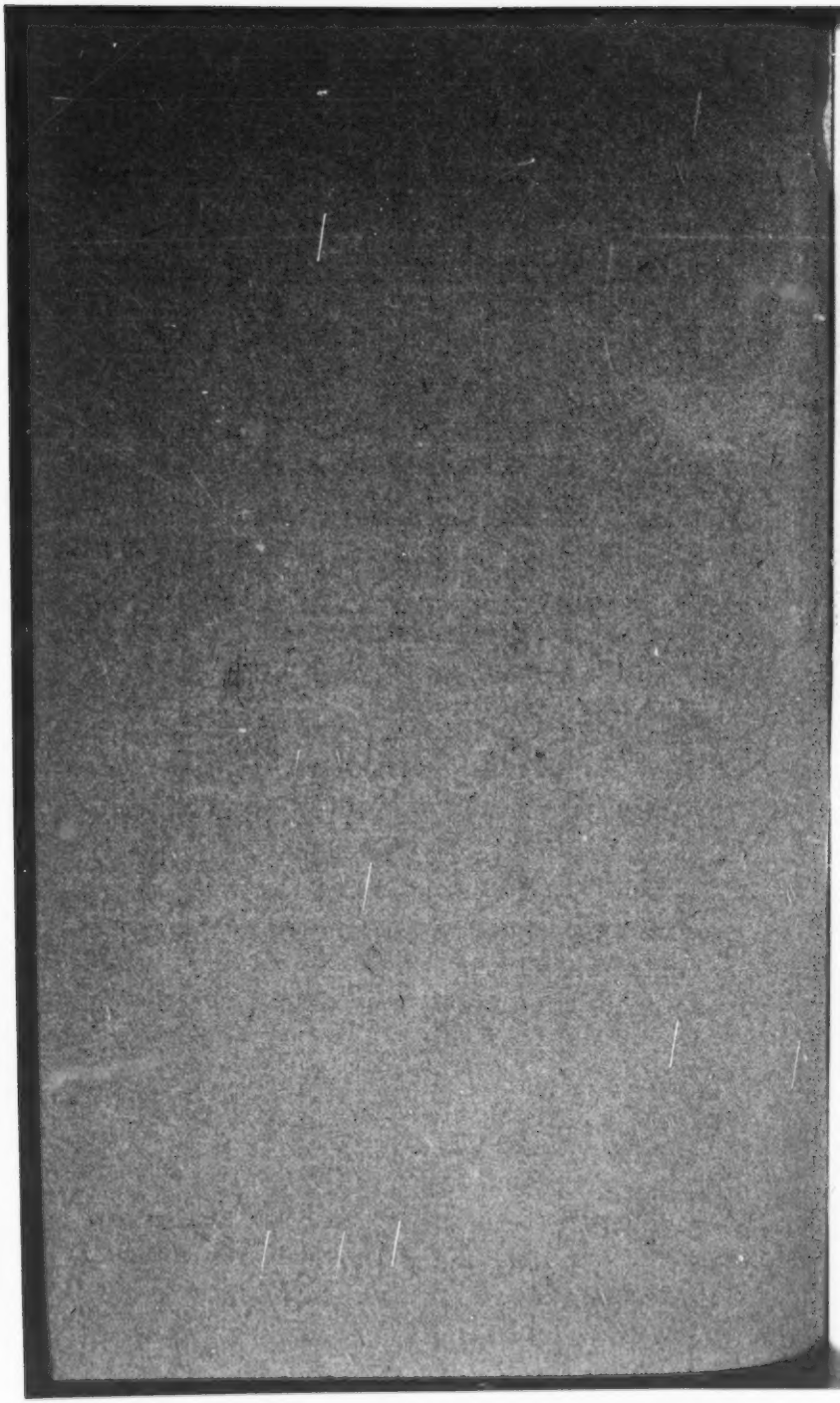
Supreme Court U. S.
FILED
FEB 23 1904
JAMES H. MCKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES EX REL. JOHN TURNER, appellant,
v.
WILLIAM WILLIAMS, COMMISSIONER, ETC. } No. 561.

REPLY TO MOTION TO ADVANCE THE CAUSE FOR HEARING AND TO ADMIT THE APPELLANT TO BAIL.



In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES EX REL. JOHN Turner, appellant, *v.* WILLIAM WILLIAMS, COMMISSIONER, ETC. } No. 561.

REPLY TO MOTION TO ADVANCE THE CAUSE FOR HEARING AND TO ADMIT THE APPELLANT TO BAIL.

The Solicitor-General, in behalf of the appellee, respectfully submits the following in reply to the motion made in behalf of appellant—

In view of the number of cases now before this court and the Department I am not willing to join in requesting that the cause be advanced, but submit that question to the court without suggestion.

I respectfully submit that bail should not be granted.

Appellant admits that he is an anarchist. The plain purpose of the act of March 3, 1903, was to protect the people of the United States from the baneful presence of all such individuals by shut-

ting the door of entrance, so far as possible, against them. And if by any means they should procure an entrance, their speedy deportation was provided for.

Congress has in effect declared that the public safety would be put in jeopardy by permitting alien anarchists to go at large within the United States. The courts should not, by admitting such persons to bail, allow a continuation of the very evil intended to be prevented by the exclusion act.

The proposition that appellant be admitted to bail upon condition that he shall go beyond the limits of the United States until this case is determined does not seem to merit serious consideration. I am not aware of any precedent for admitting a prisoner to bail upon condition that he shall go beyond the jurisdiction of the court and remain there pending an investigation of the cause.

In view of the well-considered holdings of this court the propositions of law advanced in behalf of the appellant seem without merit.

The immigration act of March 3, 1903, is not in conflict with the act of February 14, 1903, establishing the Department of Commerce and Labor. The latter act, so far as it affects the various bureaus transferred to the new Department, was intended to take effect July 1, 1903, and it was necessary to have the immigration law, effective in March, enforced by some Department between that date and the 1st of July following.

The decisions of this court in the Japanese immigrant case (189 U. S., 86), and previous cases therein referred to, constitute a complete answer to the contentions now set up in behalf of the appellant that the immigration law of 1903 is in conflict with the Constitution.

> The power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and have its declared policy in that regard enforced exclusively through executive officers without judicial intervention, is settled by our previous adjudications. (*Lem Moon Sing* v. *United States*, 158 U. S., 538.)

I RESPECTFULLY ASK THAT THE MOTION TO ADMIT TO BAIL BE DENIED.

HENRY M. HOYT,
Solicitor-General.

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In the Supreme Court of the United States.

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THE UNITED STATES EX REL. JOHN TURNER, appellant,
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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEE.



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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES EX REL. JOHN TURNER, appellant,
v.
WILLIAM WILLIAMS, COMMISSIONER, ETC., appellee.
No. 561.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEE.

STATEMENT.

On October 26, 1903, the relator filed in the United States circuit court for the southern district of New York a petition praying for a writ of *habeas corpus* to the commissioner of immigration of the port of New York, and also for a writ of *certiorari* to bring up the record of the board of inquiry which adjudged him to be an anarchist and in the United States contrary to the immigration laws. The petition in substance alleges (R., 1):

> That relator was arrested October 23, 1903, in New York City, by persons claiming to act under authority of the United States, conveyed

to the immigration station at Ellis Island, and there imprisoned by the commissioner.

That relator is imprisoned by virtue of a warrant sworn out by the Secretary of Commerce and Labor, which charges him with being an anarchist and unlawfully within the United States. A board of special inquiry, consisting of executive officers, inquired into his case and determined him to be an anarchist in the United States in violation of the immigration laws. Relator denies being an anarchist within the meaning of the law, and says, about six years ago he took out his first papers of application for citizenship. "That he has at no time been engaged as a propogandist of doctrines inciting to or advising violent overthrow of government, but for about six years last past he has been a paid organizer of the retail clerks of Great Britain, and his business in this country is solely to promote the interests of organized labor, and that he has at all times conducted himself as a peaceful and law-abiding citizen."

That, by reason of the above facts, relator says his imprisonment is illegal, "in that he is being deprived of his liberty without due process of law, and is being denied equal protection of the laws, contrary to the Constitution and laws of the United States."

Appellee Williams made return under oath showing the reason for relator's detention, and certifying the record of the board of inquiry. From this return it appears (R., 3):

That appellee is the United States commissioner of immigration at the port of New York.

Relator is an alien, being a subject of Great Britain and Ireland, who came to the United States from England about ten days prior to October 24, 1903.

That relator was arrested in New York City, October 23, 1903, under a warrant issued by the Secretary of Commerce and Labor, was taken to Ellis Island immigrant station, examined by a duly constituted board of special inquiry touching his right to remain in the United States, and was by said board found to be an alien anarchist and ordered to be deported to the country from whence he came, as a person within the United States in violation of law. On October 26, 1903, relator appealed from the decision of the board of inquiry to the Secretary of Commerce and Labor, who, having examined the cause, dismissed the appeal and directed deportation, saying:

"The evidence shows that the appellant declined to give exact information as to the manner in which he secured admission to this country, although he swears that he arrived here about ten days ago. He admits that he is an anarchist and an advocate of anarchistic principles, which brings him within the class defined by section 38 of the act approved March 3, 1903. In view of these facts the appeal is dismissed, and you are directed to deport the said John Turner in conformity with warrant now in your hands for execution." (R., 5.)

That copies of the warrant for arrest and deportation and of the minutes of the hearing before the board, with the order and decision of

> the Secretary of Commerce and Labor, are annexed, and relator is in custody at Ellis Island pending deportation to the country whence he came.

The original warrant issued by the Secretary October 19, 1903, to immigration inspectors, recites that from proofs submitted he is satisfied John Turner, an alien anarchist, came to this country contrary to the prohibition of the act of Congress approved March 3, 1903, and commands them to take him into custody and return him to the country from whence he came. (R., 4.)

The minutes of the board of special inquiry convened at Ellis Island, October 24, 1903, show that relator was brought before it, abundant evidence introduced to prove him an anarchist, that he was given a chance to be heard, and in effect admitted he was a member of such class. Thereupon he was adjudged to be within the United States contrary to law and ordered to be deported. (R., 5–9.)

It does not appear that the relator asked to be represented by counsel or to have any witnesses introduced in his behalf, or claimed there was anything further which he either could or wished to show. He evidently came into the country without the knowledge of the immigration officers—perhaps clandestinely and secretly. At all events he refused to tell how or when he succeeded in entering.

The record makes it quite plain that he is a man of intelligence, who was advised of his rights, and that

no advantage was taken of him. It is not denied that he is an anarchist and an alien who knew he came in contrary to the statute.

A demurrer was interposed to the return, and, after hearing argument, the court held the decision of the board finding Turner to be an anarchist within the United States contrary to law was not open to review; and, further, that the immigration act of March 3, 1903, did not violate the Constitution. The opinion filed by the circuit judge states (R., 13):

> The contention of the relator is that the exclusion act is unconstitutional. That objection has been raised in very many cases, and in all of them has been overruled; indeed, counsel concedes for the purpose of this argument, that as to all kinds of persons enumerated in the act, except anarchists, it is within the constitutional power of Congress to exclude them. * * * (Rec., 14.) His contention is that Congress is prohibited from excluding anarchists by the provisions of article 1 of the amendment to the Constitution, which reads: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

An appeal directly to this court was prayed and perfected, I presume upon the theory that the case is

included in one of the following clauses of section 5, judiciary act of 1891, giving such direct appeal—

> In any case that involves the construction or application of the Constitution of the United States.
>
> In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

THE APPEAL SHOULD BE DISMISSED FOR WANT OF JURISDICTION.

The constitutional question suggested in the original petition for the writ rests upon the allegation that relator's "imprisonment is illegal, in that he is being deprived of his liberty without due process of law, and is being denied equal protection of the law, contrary to the Constitution and laws of the United States."

This petition did not make out a *prima facie* case and the application for the writ should have been denied.

In the *Japanese Immigrant Case* (189 U. S., 86, 97), which arose out of a proceeding much harsher than the one now under consideration, Mr. Justice Harlan, speaking of the laws providing for the deportation of aliens, said (p. 97):

> The constitutionality of the legislation in question, in its general aspects, is no longer open to discussion in this court. That Congress may exclude aliens of a particular race from the United States, prescribe the terms and conditions upon which certain classes of aliens may

> come to this country, establish regulations for sending out of the country such aliens as come here in violation of law, and commit the enforcement of such provisions, conditions, and regulations exclusively to executive officers without judicial intervention, are principles firmly established by the decisions of this court.

Where the constitutional question raised or suggested is one which has been settled by repeated adjudications of this court and is no longer open to discussion, the case can not be said to involve the construction or application of the Constitution of the United States, or to be one in which the constitutionality of any law of the United States is drawn in question, within the meaning of the judiciary act of 1891. All possible suggestions relating to the Constitution can not be considered as forever open for discussion before this court.

In *Western Union Telegraph Company* v. *Ann Arbor Railroad Company* (178 U. S., 239, 243), Mr. Chief Justice Fuller, delivering the opinion of the court, said:

> When a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit arising under the Constitution or laws And it must appear on the record, by a statement in legal or logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy

> as to a right which depends on the construction of the Constitution or some law or treaty of the United States, before jurisdiction can be maintained on this ground.

In *Lampasas* v. *Bell* (180 U. S., 276, 282, 284), Mr. Justice McKenna, delivering the opinion of the court, said:

> This court has only jurisdiction by appeal or writ of error directly from the circuit court in certain cases, one of which is "when the constitution or law of a State is claimed to be in contravention of the Constitution of the United States." * * * But the claim must be real and substantial. A mere claim in words is not enough. (P. 284.) We repeat, the questions which can be raised under any of the subdivisions of section 5 of the act (1891) must be real, the controversies which they present must be substantial, not only from the nature of the principles invoked, but from the relation of the party to them by whom they are invoked.

In *Penn Mutual Life Insurance Company* v. *Austin* (168 U. S., 685, 695), it was held that in order to give this court jurisdiction in a case where it is claimed that the law of a State is in contravention of the Constitution of the United States, "the claim must be real and colorable, not fictitious and fraudulent."

See also *American Sugar Refining Company* v. *New Orleans* (181 U. S., 277, 281).

THE JUDGMENT OF THE CIRCUIT COURT DISMISSING THE WRIT OF HABEAS CORPUS IS CORRECT.

An act of Congress approved August 18, 1894, provides:

> In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

This court has no right to review the findings and action of the executive officers when an alien has been excluded or ordered to be deported. (*Lem Moon Sing* v. *United States*, 158 U. S., 538; *Japanese Immigrant case*, 189 U. S., 86.)

The return to the writ was demurred to and therefore is to be taken as unquestioned. No inquiry into any facts outside its statements is permissible. (*Carter* v. *McClaughry*, 183 U. S., 381.)

Appellant asks reversal of the judgment of the court below because of the unconstitutionality of the act of Congress to regulate immigration, approved March 3, 1903 (32 Stat., 1213, c. 1012), in so far as it provides for exclusion and deportation from the United States of anarchists and persons who disbelieve in or oppose all organized government.

The immigration act of 1903, among other things, provides:

> (Sec. 2.) That alien anarchists shall be excluded from admission into the United States.
>
> (Sec. 38.) That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any Territory or place subject to the jurisdiction thereof. This section shall be enforced by the Secretary of the Treasury under such rules and regulations as he shall prescribe.

It also provides (sec. 21) that in case the Secretary of the Treasury (this duty was transferred to the Secretary of Commerce and Labor July 1, 1903, by the act establishing that Department) shall be satisfied that an alien has been found in the United States in violation of this act he shall cause such alien, within the period of three years after landing or entry therein, to be taken in custody and returned to the country whence he came.

The Commissioner of Immigration (sec. 22), under direction of the Secretary of Commerce and Labor, is

charged with administration of all laws relating to immigration of aliens into the United States.

The act of 1903 is more definite in its terms, broader in its scope, and specifies a larger number of prohibited aliens, but its general purposes and the methods provided for its enforcement do not in substance differ from those provided by law as it existed under the act of 1891.

Counsel for appellant maintain that the immigration act of 1903 is unconstitutional, because—

> First. To exclude alien anarchists is in contravention of the first amendment to the Constitution, which declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
>
> Second. Because judicial power is transferred to the executive branch of the Federal Government contrary to section 1, article 3, of the Constitution, which declares that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."
>
> Third. Because it violates the constitutional provisions which declare that no person shall be deprived of liberty without due process of law; and "that in all criminal prosecutions the accused shall enjoy the right to a public trial by

an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel for his defense;" and that "no warrants shall issue but upon probable cause, supported by oath or affirmation;" and that no one in any criminal case shall be compelled to be a witness against himself.

Fourth. No power is delegated by the Constitution to the General Government over alien friends with reference to their admission into the United States, or over their beliefs, the freedom of speech or of the press.

In view of the repeated holdings of this court sustaining laws providing for the expulsion of aliens and intrusting the enforcement of the same to executive officers, the supposed constitutional objections raised by counsel for appellant to the immigration law in question seem wholly without merit; and they are, for the most part, simply repetitions of contentions long since passed upon and repeatedly denied.

The power of Congress to exclude aliens altogether or to prescribe the terms and conditions upon which they may come to this country and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is no longer open to discussion, but is settled beyond question by the decisions of this court. (*Lem Moon Sing* v. *United States.*) And as Congress may exclude all aliens, manifestly it may exclude any

designated class of them, whether almond-eyed people who come to work, or more noisy but even less desirable individuals who come to foment mischief.

The right to exclude or to expel all aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, is an inherent and inalienable right of every sovereign independent nation, essential to its safety, its independence, and its welfare. (*Fong Yue Ting* v. *United States*, 149 U. S., 711.) "The power to exclude aliens and the power to expel them rest upon one foundation, are derived from one source, are supported by the same reasons, and are in truth but parts of one and the same power." (Id., 713.)

The Chinese Exclusion Case (130 U. S., 581) (1889). This case involved the constitutionality of the act approved October 1, 1888, taking away the right of return thereto from Chinese laborers who had resided for many years in the United States and had left with certificates by the terms of which they were given such right. It was argued by eminent counsel and given much consideration. In the course of an exhaustive opinion sustaining the law, Mr. Justice Field said (p. 603):

> Those (Chinese) laborers are not citizens of the United States; they are aliens. That the Government of the United States, through the action of the legislative department, can exclude aliens from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is

a part of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power.

(P. 606:) The power of the Government to exclude foreigners from the country whenever, in its judgment, the public interests require such exclusion, has been asserted in repeated instances, and never denied by the executive or legislative departments.

Nishimura Ekiu v. *The United States* (1892) (142 U. S., 651).

This case involved the constitutionality of the act of 1891, forbidding certain classes of alien immigrants to land in the United States, and arose out of *habeas corpus* proceedings instituted by a Japanese woman, found by an executive officer to be an alien of a prohibited class. Mr. Justice Gray delivered the opinion of the court sustaining the law and said (p. 659):

It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. (Vattel, lib. 2, secs. 94, 100; 1 Phillimore (3d ed.) c. 10, sec. 220.) In the United States this power is vested in the National Government, to which the Constitution has committed the entire control of international relations in peace as well as in war. It belongs to the political department of the Government and may be exercised either through treaties made by the President and Senate or through stat-

> utes enacted by Congress, upon whom the Constitution has conferred power to regulate commerce with foreign nations, including the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States.
>
> (P. 660.) It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the National Government. As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.

Fong Yue Ting v. *United States* (1893) (149 U. S., 698).

This case arose out of *habeas corpus* proceedings instituted by certain Chinese laborers who had long resided within the United States and who were arrested and ordered deported because they had not secured certificates as provided by the act of 1892. The law was attacked as being unconstitutional. Mr. Justice Gray delivered the opinion of the court sustaining the law and said (p. 711):

> The right to exclude or to expel all aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, being an inherent and inalienable right of every sovereign and independent nation, essential to its safety, its

independence, and its welfare, the question now before the court is whether the manner in which Congress has exercised this right in sections 6 and 7 of the act of 1892 is consistent with the Constitution.

(P. 713.) The power to exclude aliens and the power to expel them rest upon one foundation, are derived from one source, are supported by the same reasons, and are, in truth, but parts of one and the same power.

The power of Congress, therefore, to expel, like the power to exclude aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers, or Congress may call in the aid of the judiciary to ascertain any contested facts on which an alien's right to be in the country has been made by Congress to depend.

Congress, having the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of the members of that class within the country, and to take all proper means to carry out the system which it provides.

(P. 730.) The proceeding before a United States judge, as provided for in section 6 of the act of 1892, is in no proper sense a trial and sentence for a crime or offense. It is simply the ascertainment, by appropriate and lawful means, of the fact whether the conditions exist upon which Congress has enacted that an alien of this class may remain within the country. The order of deportation is not a punishment for crime. It is not a banishment, in the sense

> in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty, or property without due process of law; and the provisions of the Constitution, securing the right of trial by jury, and prohibiting unreasonable searches and seizures, and cruel and unusual punishments, have no application.

Lem Moon Sing v. *United States* (1895) (158 U. S., 538).

This was a habeas corpus proceeding by a Chinese merchant who, after having acquired a permanent domicile in the United States, went for a temporary visit to China and upon his return was denied admission by the inspection officer. The constitutionality of the act and the right of Congress to entrust its execution to executive officers were sustained. The opinion of the court was delivered by Mr. Justice Harlan, who reviewed its former holding on the questions involved and said (p. 547):

> The power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared

policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by our previous adjudications.

Wong Wing v. *United States* (1896) (163 U. S., 228). Justice Shiras, who delivered the opinion of the court, said (p. 234):

> The Chinese-exclusion acts operate upon two classes—one consisting of those who came into the country with its consent, the other of those who have come into the United States without their consent and in disregard of the law. Our previous decisions have settled that it is within the constitutional power of Congress to deport both of these classes, and to commit the enforcement of the law to executive officers.
>
> (P. 237) We regard it as settled by our previous decisions that the United States can, as a matter of public policy, by Congressional enactment, forbid aliens or classes of aliens from coming within their borders, and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the power and duty of identifying and arresting the persons included in such decree, and causing their deportation, upon executive or subordinate officials. * * *
>
> No limits can be put by the courts upon the power of Congress to protect, by summary methods, the country from the advent of aliens whose race or habits render them undesirable as citizens, or to expel such if they have already found their way into our land and unlawfully remain therein.

Fok Yung Yo v. *United States* (1902) (185 U. S., 296).

Chief Justice Fuller delivered the opinion of the court, and said (p. 302):

> The doctrine is firmly established that the power to exclude or expel aliens is vested in the political departments of the Government, to be regulated by treaty or by act of Congress, and to be executed by the executive authority according to such regulations, except so far as the judicial department is authorized by treaty or by statute, or is required by the Constitution to intervene.

See also *Chin Bak Kan* v. *United States* (1902) (186 U. S., 193).

In the *Japanese Immigrant case* (1903) (189 U. S., 86), the constitutionality of the immigration act of 1891, excluding certain aliens and providing for their deportation if found by executive officers to be unlawfully in this country, was assailed. The opinion of the court was delivered by Mr. Justice Harlan, who reviewed the sundry acts of Congress forbidding the entry of aliens, and said (p. 97):

> The constitutionality of the legislation in question, in its general aspects, is no longer open to discussion in this court. That Congress may exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain clasess of aliens may come to this country; establish regulations for sending out of the country such aliens as come

all kinds of aliens, including those tainted with anarchistic sentiments as well as those less objectionable; and if such action would violate no constitutional provision, surely the exclusion of *some* aliens who are anarchists is not unconstitutional

Anarchy has nothing to do with religion, as that word is used in the Constitution, and can no more claim protection under such guise than can belief in polygamy—in reference to which pretence of religious conviction this court spoke with such disapproval in the cases of *Mormon Church* v. *United States* (136 U. S., 1, 48), and *Davis* v. *Beason* (133 U. S., 333, 342).

Abridgment of the freedom of speech or of the press is no more brought about by the exclusion or expulsion of anarchists than by similar treatment of the followers of Confucius. If anarchists have the absolute right to come here in order to spread their doctrines, so have believers in the teachings of Confucius or Buddha, and so would all others who wish to talk publicly or privately. And as the right to talk is no more sacred than the right to work, all workers, under the same sort of argument, must be admitted.

Surely, the right of the people peaceably to assemble and to petition the Government for a redress of grievances is not interfered with by protecting the country from the presence of alien persons whose fundamental tenet is the overthrow of Government and denial of any power in it to redress a grievance.

"AN ACT CONCERNING ALIENS" passed by Congress, and approved June 25, 1798—a time when the

principles of liberty were certainly not entirely disregarded—was far more drastic than the act of 1903. It gave the President full authority "to order all such aliens as he should judge dangerous to the peace and safety of the United States" to depart therefrom. The constitutionality of the act was never passed upon by this court, but Justice Iredell, in a charge to the Federal grand jury at Philadelphia, April 11, 1799, asserted its validity with much vigor and learning, and declared as fundamental the rule that the right of an alien to enter and remain in any country depends upon its assent, which may be given or withdrawn at pleasure. He said in part:

> It is believed that it never was suggested in any other country that *aliens* had a right to go into a foreign country and stay at their will and pleasure without any leave from the Government. The law of nations undoubtedly is that when an alien goes into a foreign country he goes under either an express or implied safe conduct. In most countries in Europe, I believe, an express passport is necessary for strangers. Where greater liberality is observed, yet it is always understood that the government may order away an alien whose stay is deemed incompatible with the safety of the country. (Life and Correspondence of James Iredell, by McRee, vol. 2, p. 553.)

Mr. Jefferson, in the Kentucky and Virginia Resolutions, and Mr. Madison in his REPORT on the Virginia Resolutions, attacked with great earnestness the constitutionality of the "ACT CONCERNING ALIENS,"

but it seems not to have occurred to either of them that its drastic provisions conflicted with the first amendment to the Constitution. (Elliot's Debates, vol. 4, 528, 540, 546.) They had rather intimate acquaintance with that instrument and pronounced views upon the strictness with which all its provisions should be construed, and it is not unreasonable to conclude that if the alien law probably trenched upon any of its parts they would have so declared.

The committee of Congress, to which were referred the petitions attacking the constitutionality and asking repeal of the alien and sedition laws of 1798, made an elaborate report in their support February, 1799, and, among other things, said (Annals of Congress, p. 2986):

> The asylum given by a nation to foreigners is mere matter of favor, resumable at public will. On this point abundant authority might be adduced, but the common practice of nations attests the principle.
>
> The Constitution was made for citizens, not for aliens, who of consequence have no rights under it but remain in the country and enjoy the benefit of the laws, not as matter of right but merely as matter of favor and permission, which favor and permission may be withdrawn whenever the Government charged with the general welfare shall judge their further continuance dangerous.

The doctrine announced in brief for appellant (p. 50) that "the exclusive right of any people to any given

territory has no substantial basis except in despotism and ignorance," may appear beyond controversy to those who have attained to belief in the undesirability of all government, but it is directly in conflict with the principles which control this court, and which have been adhered to by the valuable citizens of this Republic since its foundation. If such doctrine ever prevails then, in the picturesque language of appellant's counsel (Br., 72), "those provisions of the Constitution which go to the very competency of Congress and to the protection of all persons might as well be undecipherable hieroglyphics buried in the sands of the remotest desert."

An awful experience forced our lawmakers to conclude that the presence of alien anarchists in the United States would be contrary to the public good, and in that opinion the vast majority of law-abiding, enlightened American citizens undoubtedly concur. This court enforces valid laws passed by Congress—into their wisdom it is not accustomed to inquire—and arguments based upon the supposed "stupidity of the law" are appropriate only in some other forum.

It certainly is to "depart into the fantastic" (Br., 48) for one to declare to this court: "Turn it whichever way one may the law of 1903 is a recrudescence of that sanguinary spirit of the past concerning whose machinations no one can read without astonishment and indignation." (Br., 40.)

To exclude from a land, governed by law, those aliens whose mission in the world is to defend the

action of the fiendish individuals who threw bombs among Chicago policemen who inspired the murder of a President, and who preach the religion of assassination, is rather a mild precaution against men who seek the destruction of what all true Americans hold essential. Prudent proprietors do not entertain in hospitable security strangers whose declared purpose is to burn down the house which protects them.

The assault by counsel (Br., 53) upon the Department of Commerce and Labor and the attempt to make it appear that in its organization there was concealed a deadly purpose to further a conspiracy against labor—exemplified by the arrest of appellant, a confessed anarchist—is another departure "into the fantastic."

The appellant is a member of a class of aliens considered by Congress as especially dangerous, and nothing in his case seems to entitle him to greater consideration or different treatment from that accorded other undesirables specified in the statute. He appears from the finding of the immigration officers to be much less desirable than many others to whom admission is denied; and the Department of Commerce and Labor was plainly acting in the interest of all the people when he was ordered to be deported. An alien with a leprous mind is certainly less entitled to generous treatment than are such unfortunates as "idiots, insane persons, and epileptics," all of whom are barred from entry.

The policy of the United States, long and well established, is to exclude aliens whose presence it believes would be peculiarly baneful. There is nothing important in the present case which is new, and no substantial ground is perceived for the alarm expressed by counsel, who declare (Br., 98), "If any one doubts that civilization and liberty are upon a treacherous foundation, he only need recur to the spectacle of the law of 1903."

I submit that, in the opinion of this court, anarchy is manifestly opposed to both civilization and liberty, and neither would be endangered by its extinction.

THE GOVERNMENT RESPECTFULLY ASKS THAT THE APPEAL BE DISMISSED, AND IF SUCH ACTION IS NOT PERMISSIBLE, THAT THE JUDGMENT OF THE CIRCUIT COURT BE IN ALL THINGS AFFIRMED.

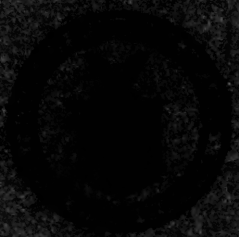
J. C. MCREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *April, 1904.*

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LAWS AND REGULA



DEPARTMENT OF COMMERCE AND LABOR

BUREAU OF IMMIGRATION

IMMIGRATION

LAWS AND REGULATIONS

AUGUST, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1904

DEPARTMENT OF COMMERCE AND LABOR

Document No. 9

BUREAU OF IMMIGRATION

IMMIGRATION REGULATIONS.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION,
Washington, D. C., August 26, 1903.

RULE 1. Collectors of customs shall collect, as provided in section 1 of the act approved March 3, 1903, a duty of $2 for each and every passenger, not a citizen of the United States, or of Canada, or of Cuba, or of Mexico, who shall come by steam or sail vessel from any foreign port to any port within the United States; but no duty shall be paid for such passengers proceeding in continuous transit through the United States to foreign territory, nor for those who have once been admitted to the United States and have paid the head tax who shall later go in transit from one part of the United States to another through foreign contiguous territory.

RULE 2. Under the authority contained in the proviso to section 1 of the act approved March 3, 1903, the duty of $2 levied upon railways or other transportation agencies for passengers brought by them overland from foreign contiguous territory shall be collected, until otherwise provided, in accordance with the terms of an agreement between the Commissioner-General of Immigration and certain transportation companies of the Dominion of Canada, of date November 1, 1901.

RULE 3. All such moneys so collected, as well as all moneys collected for rentals of exclusive privileges at United States immigrant stations, shall be deposited to the credit of the Treasurer of the United States on account of "immigrant fund," with an assistant treasurer of the United States, or national-bank depositary, in the same manner as other miscellaneous collections are reported. Separate accounts of the receipts and expenditures of money under the act shall be rendered monthly to the Secretary of the Treasury through the Department of

Commerce and Labor, on forms to be furnished by the Government for the purpose.

RULE 4. Every railway company or other transportation agency claiming exemption from payment of the head tax for any passenger brought by it to a point on the land boundary of the United States for entry thereat, under the exemption from such payment provided in section 1 of the act approved March 3, 1903, shall produce to the appropriate officer at such point a letter from an immigration officer at, or nearest to, the alleged residence of such passenger, stating that after investigation said immigration officer has ascertained that said passenger had already been lawfully admitted to the United States and that the head tax for his admission had been paid at the time of such admission, and said company or other transportation agency shall also show, as evidence that the transit of such passenger was continuous, the dated ticket issued to such passenger.

RULE 5. The head tax provided for in section 1 of the act approved March 3, 1903, shall be collected and paid for every alien passenger not specifically excepted therein.

RULE 6. The provisions of the immigration laws, and of regulations passed thereunder, except those of section 1 of the act of March 3, 1903, in relation to the payment of the head tax, extend to all persons not citizens of the United States either by birth or by naturalization therein.

RULE 7. Every alien arriving at a port of the United States shall be promptly examined, as by law provided, either on shipboard or at some other place designated for that purpose. If found admissible, he shall be at once landed, but if upon special inquiry he is denied admission, he shall be informed that he has a right of appeal therefrom, and the fact that he has been so informed shall be entered of record in the minutes of the board's proceedings. but no appeal will be considered after any such alien has, in consequence of an adverse decision of a board of special inquiry, been transferred from an immigrant station to be deported.

RULE 8. Every alien detained for special inquiry, which shall be conducted separate and apart from the public, shall have a speedy hearing and, upon the conclusion thereof, be either at once landed or ordered deported. If he elects to appeal from said order of deportation, he must, to enable officers to comply with the provisions of section 19 of the act of March 3, 1903, file notice of such appeal promptly, and a like right of appeal may be exercised by any member of a board of special inquiry who dissents from the decision rendered by such board.

RULE 9. Every such notice of appeal shall act as a stay upon the disposal of the alien whose rights are thereby affected until a final

decision is rendered by the Department; and, within thirty-six hours after the filing of such notice, the record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith, should be forwarded to the Commissioner-General of Immigration by the chief immigration officer at the port of arrival, accompanied by his views thereon in writing; but on such appeal of any case to the Department no evidence will be considered which has not already been passed upon in said case by a board of special inquiry. If additional time is granted to the friends or counsel of an appealing alien to prevent a miscarriage of justice, the said chief officer may require the deposit of a sum of money sufficient to defray the cost of maintaining appellant during the additional time thus allowed.

RULE 10. The commissioner of immigration or the chief immigration officer at the port of landing shall enter of record the name of every alien found upon examination to be within any of the prohibited classes, with a statement of the decision in each case; and if such decision be appealed from, immediately upon the receipt from the Department of its conclusions thereupon the alien shall be at once landed or deported in accordance with such conclusion. If a landing is refused on appeal, the master, agent, consignee, or owner of the vessel by which the said alien arrived shall be notified thereof by the commissioner or chief immigration officer, and that the said alien will be placed on the said vessel to be returned as aforesaid.

RULE 11. Attorneys and persons appearing in behalf of detained aliens shall not be permitted to charge a sum exceeding ten dollars ($10) in each case, unless the commissioner shall, in writing, allow an additional compensation, which fee shall be payable through the commissioner. Anyone charging an alien a fee prior to his detention, or charging or receiving from an alien or his relatives or friends a fee, gift, or compensation for his services in excess of above rates, or who shall deprive an alien of any part of his chattels or effects in lieu of, or as security for, said fee, shall not be permitted to practice at any immigrant station of the United States.

RULE 12. The expenses incurred for the keeping and maintenance of every alien temporarily removed from a vessel, as provided by law, shall be borne by the owner or owners of the vessel upon which he came until he is lawfully landed or delivered on board such vessel for deportation.

RULE 13. The master, agent, owner, or consignee of any vessel on which aliens are brought to the United States shall, at least twenty-four hours in advance thereof, notify the commissioner of immigration of the intended time of sailing of such vessel, in order that said officer may place on board thereof every alien brought thereon who has been refused a landing.

RULE 14. Every alien professing to seek a landing for the purpose

of proceeding directly through the United States to a foreign country shall be examined, and, if found to be a member of any one of the excluded classes, shall be refused permission to land in the same manner as though he intended to remain in the United States.

RULE 15. No alien desiring admission at a port of the United States for the professed purpose of proceeding directly therefrom to foreign territory shall be permitted to land thereat except after deposit with the collector of customs at said port by the master or owner of the vessel on which such alien is brought of the amount of the head tax ($2) prescribed by section 1 of the act approved March 3, 1903, said amount to be refunded upon proof satisfactory to the immigration officer in charge at the port of arrival that said alien has passed by direct and continuous journey through and out of the United States.

RULE 16. Every alien who left the port of embarkation in good physical condition, and who would be qualified to land but for some sickness or disability other than a loathsome or a dangerous contagious disease, which was contracted or which developed during the voyage, may either remain on shipboard or be removed for hospital treatment at the expense of the owners of the vessel on which he came, and while detained in hospital he shall not be considered as landed, provided that if the sickness or disability with which such alien is afflicted is so slight, in the judgment of the examining medical officer, as not to require treatment in hospital, and said alien is able to pay for the necessary medical care he needs, he shall be landed. Requests by such owners for reimbursement for hospital expenses may be made only in respect of aliens detained under the provisions of this rule, and then only in a proper manner.

RULE 17. Any alien who has been lawfully landed, but who has become a public charge from subsequently arising physical inability to earn a living which is likely to be of a permanent nature, may, with the approval of the Bureau of Immigration, be deported within one year from date of landing, at the expense of the immigrant fund, provided that such alien is delivered to the immigration officers at a designated port free of charge; and the charges incurred for the care and treatment of any such alien in any public or charitable institution from the date of notification to the Bureau of Immigration until the expiration of one year after landing may be paid from the immigrant fund at fixed rates agreed upon.

RULE 18. Any alien who has been finally determined to be admissible may be permitted to wait for friends or remittances upon payment by him of expenses incurred by reason of such delay. In case such an alien is unable, from accident or other unavoidable circumstances, to immediately continue his journey, and is without sufficient means to defray the expense of his enforced delay, the commissioner of immigration may, in his discretion, pay said expense, reporting

said case to the Bureau of Immigration with reasons for his action, and request that such expense be repaid out of the immigrant fund.

RULE 19. Not over one accompanying alien (preferably the natural guardian or a relative) shall be detained at the expense of the transportation company for the purpose of caring for an alien who, for any reason, is detained for further inquiry, if the latter requires such care. (See sec. 11, act approved March 3, 1903.)

RULE 20. No application for the admission under bond of a debarred alien will be considered except in cases in which deportation of the alien in whose behalf such application is made would involve the separation of immediate members of a family, and in that case only when a deposit of money is made sufficient to defray the expense of maintaining such alien whilst awaiting a decision upon such application.

RULE 21. The cost of returning aliens under the provisions of sections 19 and 20 of the act approved March 3, 1903, shall include all expenses incurred for maintenance of such aliens after such cases are brought to the attention of the Bureau of Immigration, provided said Bureau, upon investigation, has ascertained the case to be one for deportation and has so ordered.

RULE 22. Every immigration officer deporting any alien under the provisions of section 20 of the act of March 3, 1903, shall submit to the Bureau of Immigration for approval bills for one-half the cost of inland transportation of such alien to the seaport of deportation against the vessel or transportation line by which such alien was brought to the United States, in order that the amount so expended by any such officer may be collected and returned to him.

RULE 23. In case of the failure of the master or commanding officer of any vessel bringing aliens to any port within the United States to deliver to the immigration officers at said port lists or manifests of such aliens, as required in sections 12, 13, and 14 of the act approved March 3, 1903, there shall be paid to the collector of customs at the port of arrival the sum of $10 for each alien concerning whom the information required by such sections is not contained in any list or manifest as aforesaid. Under an opinion of the Solicitor of the Treasury, the fine mentioned in this rule can not be remitted.

RULE 24. The certificate required by section 8 of the act approved March 3, 1893, shall be filed with the Secretary of Commerce and Labor upon the first days of January and July of each year.

RULE 25. No charge for food, lodging, or maintenance, or for hospital attendance, medicines, or other hospital expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the Service self-sustaining without profit.

RULE 26. Every officer of the United States Public Health and Marine-Hospital Service detailed under section 17 of the act approved March 3, 1903, for duty to any point in the United States shall, during

the continuance of such detail, be under the direction (subject to the Public Health and Marine-Hospital Service regulations governing the medical inspection of aliens, as approved by the Secretary of the Treasury November 18, 1902) of the immigration officer in charge of the said port.

RULE 27. There shall be made by the commissioners of immigration at the various ports of the United States and Canada weekly reports to the Bureau of Immigration containing a list of all aliens detained from Sunday morning until Saturday night, inclusive, of each week, in which shall be embodied the following information: Name of alien; age and sex; date of arrival; vessel on which alien arrived; date of detention; cause of detention; whether case has been disposed of, and if so, what disposition has been made of it.

RULE 28. Officers employed in the administration of the immigration and Chinese-exclusion laws are notified that all communications to the Department upon official matters must be addressed to the Commissioner-General of Immigration or to the Secretary of Commerce and Labor.

F. P. SARGENT,
Commissioner-General of Immigration.

Approved:
GEO. B. CORTELYOU,
Secretary of Commerce and Labor.

EXAMINATION OF ALIEN SEAMEN UNDER THE PROVISIONS OF THE LAWS REGULATING IMMIGRATION.

1903.
DEPARTMENT CIRCULAR No. 10.
BUREAU OF IMMIGRATION.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, August 1, 1903.

To commissioners of immigration and other officers charged with the administration of the various laws pertaining to the immigration of aliens:

In view of the opinion of the Attorney-General of the United States, of date September 10, 1901 (23 Op., 521), you are hereby instructed that it is your duty to make such an investigation of every vessel arriving at a port of the United States from any other than a mainland or continental port thereof, as will enable you to ascertain the members of their respective crews who are aliens, as well as the intention of such alien members in seeking a landing.

(1) Alien seamen who seek to land, in the regular course of their pursuit, with the bona fide intention of departing as soon as practicable upon some outward-bound vessel, are not to be held for examination touching their right to land under the various acts regulating immi-

gration into the United States, nor shall the masters of the vessels upon which they come to a port of the United States be charged on their account with the head tax prescribed by section 1 of the act approved March 3, 1903.

(2) Alien seamen who are discharged, or are to be discharged, or who have deserted their vessel at a port of the United States with any other object in view than departing as described in the next preceding paragraph (1) are in no respect to be distinguished on account of their prior calling or occupation as seamen from other aliens seeking admission to this country, either as regards collection of head tax on their account or as respects the examination and determination of their right to remain under the various acts regulating immigration.

(3) All other aliens signed on the ship's articles of any vessel arriving at a port of the United States shall be examined, and in all respects regarded, as alien passengers, on account of whom the head tax should be collected and who should be admitted, or ordered returned to the countries whence they came, in accordance with the laws and regulations governing immigration.

GEO. B. CORTELYOU, *Secretary.*

VARIOUS ACTS OF CONGRESS RELATING TO IMMIGRATION.

Sections 3 and 5 of an act supplementary to the acts in relation to immigration, approved March 3, 1875, vol. 18, part 3, United States Statutes at Large, provide:

"SEC. 3. That the importation into the United States of women for the purpose of prostitution is hereby forbidden; and all contracts and agreements in relation thereto, made in advance or in pursuance of such illegal importation and purposes, are hereby declared void; and whoever shall knowingly and willfully import, or cause any importation of, women into the United States for the purposes of prostitution, or shall knowingly or willfully hold, or attempt to hold, any women to such purposes, in pursuance of such illegal importation and contract or agreement, shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not exceeding five years and pay a fine not exceeding five thousand dollars."

"SEC. 5. That it shall be unlawful for aliens of the following classes to immigrate into the United States, namely, persons who are undergoing a sentence for conviction in their own country of felonious crimes other than political or growing out of or the result of such political offenses, or whose sentence has been remitted on condition of their emigration, and women 'imported for the purposes of prostitution.' Every vessel arriving in the United States may be inspected under the direction of the collector of the port at which it arrives, if he shall have reason to believe that any such obnoxious persons are on board; and the officer making such inspection shall certify the result thereof to the master or other person in charge of such vessel, designating in such certificate the person or persons, if any there be, ascertained by him to be of either of the classes whose importation is hereby forbidden. When such inspection is required by the collector as aforesaid, it shall be unlawful, without his permission, for any alien to leave any such vessel arriving in the United States from a foreign country until the inspection shall have been had and the result certified as herein provided; and at no time thereafter shall any alien certified to by the inspecting officer as being of either of the classes whose immigation is forbidden by this section be allowed to land in the United States, except in obedience to a judicial process issued pursuant to law. If any person shall feel aggrieved by the certificate of such inspecting officer stating him or her to be within either of the classes whose immigration is forbidden by this section, and shall apply for release or other remedy to any proper court or judge, then it shall be the duty of the collector at said port of entry to detain said vessel until a hearing and determination of the matter are had, to the end that if the said inspector shall be found to be in accordance with this section, and sustained, the obnoxious person or persons shall be returned on board of said vessel, and shall not

thereafter be permitted to land, unless the master, owner, or consignee of the vessel shall give bond and security, to be approved by the court or judge hearing the cause, in the sum of five hundred dollars for each such person permitted to land, conditioned for the return of such person, within six months from the date thereof, to the country whence his or her emigration shall have taken place, or unless the vessel bringing such obnoxious person or persons shall be forfeited, in which event the proceeds of such forfeiture shall be paid over to the collector of the port of arrival, and applied by him, as far as necessary, to the return of such person or persons to his or her own country within the said period of six months. And for all violations of this act, the vessel, by the acts, omissions, or connivance of the owners, master, or other custodian, or the consignees of which the same are committed, shall be liable to forfeiture, and may be proceeded against as in cases of frauds against the revenue laws, for which forfeiture is prescribed by existing law."

Approved, March 3, 1875.

AN ACT to regulate immigration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be levied, collected, and paid a duty of fifty cents for each and every passenger not a citizen of the United States who shall come by steam or sail vessel from a foreign port to any port within the United States. The said duty shall be paid to the collector of customs of the port to which such passenger shall come, or if there be no collector at such port, then to the collector of customs nearest thereto, by the master, owner, agent, or consignee of every such vessel, within twenty-four hours after the entry thereof into such port. The money thus collected shall be paid into the United States Treasury and shall constitute a fund to be called the immigrant fund and shall be used, under the direction of the Secretary of the Treasury, to defray the expense of regulating immigration under this act and for the care of immigrants arriving in the United States, for the relief of such as are in distress, and for the general purposes and expenses of carrying this act into effect. The duty imposed by this section shall be a lien upon the vessels which shall bring such passengers into the United States, and shall be a debt in favor of the United States against the owner or owners of such vessels, and the payment of such duty may be enforced by any legal or equitable remedy: *Provided*, That no greater sum shall be expended for the purposes hereinbefore mentioned, at any port, than shall have been collected at such port.

SEC. 2. That the Secretary of the Treasury is hereby charged with the duty of executing the provisions of this act and with supervision over the business of immigration to the United States, and for that purpose he shall have power to enter into contracts with such State commission, board, or officers as may be designated for that purpose by the governor of any State to take charge of the local affairs of immigration in the ports within said State, and to provide for the support and relief of such immigrants therein landing as may fall into distress or need public aid, under the rules and regulations to be prescribed by said Secretary; and it shall be the duty of such State commission, board, or officers so designated to examine into the con-

dition of passengers arriving at the ports within such State in any ship or vessel, and for that purpose all or any of such commissioners, or officers or such other person or persons as they shall appoint, shall be authorized to go on board of and through any such ship or vessel; and if on such examination there shall be found among such passengers any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge, they shall report the same in writing to the collector of such port, and such person shall not be permitted to land.

SEC. 3. That the Secretary of the Treasury shall establish such regulations and rules and issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated to protect the United States and immigrants into the United States from fraud and loss and for carrying out the provisions of this act and the immigration laws of the United States; and he shall prescribe all forms of bonds, entries, and other papers to be used under and in the enforcement of the various provisions of this act.

SEC. 4. That all foreign convicts, except those convicted of political offenses, upon arrival, shall be sent back to the nations to which they belong and from whence they came. The Secretary of the Treasury may designate the State board of charities of any State in which such board shall exist by law, or any commission in any State, or any person or persons in any State whose duty it shall be to execute the provisions of this section without compensation. The Secretary of the Treasury shall prescribe regulations for the return of the aforesaid persons to the countries from whence they came and shall furnish instructions to the board, commission, or persons charged with the execution of the provisions of this section as to the mode of procedure in respect thereto, and may change such instructions from time to time. The expense of such return of the aforesaid persons not permitted to land shall be borne by the owners of the vessel in which they came.

SEC. 5. That this act shall take effect immediately.

Approved August 3, 1882.

AN ACT to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes, approved June 26, 1884.

SEC. 22. That until the provisions of section one, chapter three hundred and seventy-six, of the laws of eighteen hundred and eighty-two, shall be made applicable to passengers coming into the United States by land carriage, said provisions shall not apply to passengers coming by vessels employed exclusively in the trade between the ports of the United States and the ports of the Dominion of Canada or the ports of Mexico.

ACT OF FEBRUARY 26, 1885.

ORIGINAL ACT.

AN ACT to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after

the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

SEC. 2. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any person, company, partnership, or corporation, and any foreigner or foreigners, alien or aliens, to perform labor or service or having reference to the performance of labor or service by any person in the United States, its Territories, or the District of Columbia, previous to the migration or importation of the person or persons whose labor or service is contracted for into the United States, shall be utterly void and of no effect.

SEC. 3. That for every violation of any of the provisions of section one of this act the person, partnership, company, or corporation violating the same, by knowingly assisting, encouraging or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States, its Territories, or the District of Columbia, to perform labor or service of any kind under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States or by any person who shall first bring his action therefor, including any such alien or foreigner who may be a party to any such contract or agreement, as debts of like amount are now recovered in the circuit courts of the United States; the proceeds to be paid into the Treasury of the United States; and separate suits may be brought for each alien or foreigner being a party to such contract or agreement aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit at the expense of the United States.

SEC. 4. That the master of any vessel who shall knowingly bring within the United States on any such vessel, and land, or permit to be landed, from any foreign port or place, any alien laborer, mechanic, or artisan who, previous to embarkation on such vessel, had entered into contract or agreement, parol or special, express or implied, to perform labor or service in the United States, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not more that five hundred dollars for each and every such alien laborer, mechanic, or artisan so brought as aforesaid, and may also be imprisoned for a term not exceeding six months.

SEC. 5. That nothing in this act shall be so construed as to prevent any citizen or subject of any foreign country temporarily residing in the United States, either in private or official capacity, from engaging, under contract or otherwise, persons not residents or citizens of the United States to act as private secretaries, servants, or domestics for such foreigners temporarily residing in the United States as aforesaid; nor shall this act be so construed as to prevent any person, or persons,

partnership, or corporation from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the United States in or upon any new industry not at present established in the United States: *Provided*, That skilled labor for that purpose can not be otherwise obtained; nor shall the provisions of this act apply to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants: *Provided*, That nothing in this act shall be construed as prohibiting any individual from assisting any member of his family or any relative or personal friend, to migrate from any foreign country to the United States, for the purpose of settlement here.

SEC. 6. That all laws or parts of laws conflicting herewith be, and the same are hereby, repealed.

Approved February 26, 1885 (23 Stat L., 332).

AMENDATORY ACT.

AN ACT to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, the Territories, and the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia, approved February twenty-sixth, eighteen hundred and eighty-five, and to provide for the enforcement thereof, be amended by adding the following:

"SEC. 6. That the Secretary of the Treasury is hereby charged with the duty of executing the provisions of this act, and for that purpose he shall have power to enter into contracts with such State commission, board, or officers as may be designated for that purpose by the governor of any State to take charge of the local affairs of immigration in the ports within said State, under the rules and regulations to be prescribed by said Secretary; and it shall be the duty of such State commission, board, or officers so designated to examine into the condition of passengers arriving at the ports within such State in any ship or vessel, and for that purpose all or any of such commissioners or officers or such other person or persons as they shall appoint shall be authorized to go on board of and through any such ship or vessel; and if in such examination there shall be found among such passengers any person included in the prohibition in this act, they shall report the same in writing to the collector of such port, and such person shall not be permitted to land.

"SEC. 7. That the Secretary of the Treasury shall establish such regulations and rules, and issue from time to time such instructions not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this act; and he shall prescribe all forms of bonds, entries, and other papers to be used under and in the enforcement of the various provisions of this act.

"SEC. 8. That all persons included in the prohibition in this act, upon arrival, shall be sent back to the nations to which they belong and from whence they came. The Secretary of the Treasury may

designate the State board of charities of any State in which such board shall exist by law, or any commission in any State, or any person or persons in any State, whose duty it shall be to execute the provisions of this section and shall be entitled to reasonable compensation therefor to be fixed by regulation prescribed by the Secretary of the Treasury. The Secretary of the Treasury shall prescribe regulations for the return of the aforesaid persons to the countries from whence they came, and shall furnish instructions to the board, commission, or persons charged with the execution of the provisions of this section as to the time of procedure in respect thereto, and may change such instructions from time to time. The expense of such return of the aforesaid persons not permitted to land shall be borne by the owners of the vessels in which they came. And any vessel refusing to pay such expenses shall not thereafter be permitted to land at or clear from any port of the United States. And such expenses shall be a lien on said vessel. That the necessary expense in the execution of this act for the present fiscal year shall be paid out of any money in the Treasury not otherwise appropriated.

"SEC. 9. That all acts and parts of acts inconsistent with this act are hereby repealed.

"SEC. 10. That this act shall take effect at the expiration of thirty days after its passage."

Approved, February 23, 1887 (24 Stat. L., 414).

AMENDMENT TO THE ALIEN CONTRACT-LABOR LAW CONTAINED IN THE DEFICIENCY BILL APPROVED OCTOBER 19, 1888 (25 STAT. L., 565).

That the act approved February twenty-third, eighteen hundred and eighty-seven, entitled "An act to amend an act to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia," be, and the same is hereby, so amended as to authorize the Secretary of the Treasury, in case that he shall be satisfied that an immigrant has been allowed to land contrary to the prohibition of that law, to cause such immigrant, within the period of one year after landing or entry, to be taken into custody and returned to the country from whence he came, at the expense of the owner of the importing vessel; or, if he entered from an adjoining country, at the expense of the person previously contracting for the services.

ACT OF MARCH 3, 1891.

AN ACT in amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following classes of aliens shall be excluded from admission into the United States, in accordance with the existing acts regulating immigration, other than those concerning Chinese laborers: All idiots, insane per-

sons, paupers or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease, persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, polygamists, and also any person whose ticket or passage is paid for with the money of another or who is assisted by others to come, unless it is affirmatively and satisfactorily shown on special inquiry that such person does not belong to one of the foregoing excluded classes, or to the class of contract laborers excluded by the act of February twenty-sixth, eighteen hundred and eighty-five, but this section shall not be held to exclude persons living in the United States from sending for a relative or a friend who is not of the excluded classes under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That nothing in this act shall be construed to apply to or exclude persons convicted of a political offense, notwithstanding said political offense may be designated as a "felony, crime, infamous crime, or misdemeanor, involving moral turpitude" by the laws of the land whence he came or by the court convicting.

SEC. 2. That no suit or proceeding for violations of said act of February twenty-sixth, eighteen hundred and eighty-five, prohibiting the importation and migration of foreigners under contract or agreement to perform labor shall be settled, compromised, or discontinued without the consent of the court entered of record with reasons therefor.

SEC. 3. That it shall be deemed a violation of said act of February twenty-sixth, eighteen hundred and eighty-five, to assist or encourage the importation or migration of any alien by promise of employment through advertisements printed and published in any foreign country; and any alien coming to this country in consequence of such an advertisement shall be treated as coming under a contract as contemplated by such act; and the penalties by said act imposed shall be applicable in such a case: *Provided*, This section shall not apply to States and immigration bureaus of States advertising the inducements they offer for immigration to such States.

SEC. 4. That no steamship or transportation company or owners of vessels shall directly or through agents, either by writing, printing, or oral representations, solicit, invite, or encourage the immigration of any alien into the United States except by ordinary commercial letters, circulars, advertisements, or oral representations, stating the sailings of their vessels and the terms and facilities of transportation therein; and for a violation of this provision any such steamship or transportation company, and any such owners of vessels, and the agents by them employed, shall be subjected to the penalties imposed by the third section of said act of February twenty-sixth, eighteen hundred and eighty-five, for violations of the provisions of the first section of said act.

SEC. 5. That section five of said act of February twenty-sixth, eighteen hundred and eighty-five, shall be, and hereby is, amended by adding to the second proviso in said section the words "nor to ministers of any religious denomination, nor persons belonging to any recognized profession, nor professors for colleges and seminaries," and by excluding from the second proviso of said section the words "or any relative or personal friend."

SEC. 6. That any person who shall bring into or land in the United States by vessel or otherwise, or who shall aid to bring into or land in the United States by vessel or otherwise, any alien not lawfully entitled to enter the United States shall be deemed guilty of a misdemeanor, and

shall, on conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment.

SEC. 7. That the office of superintendent of immigration is hereby created and established, and the President, by and with the advice and consent of the Senate, is authorized and directed to appoint such officer, whose salary shall be four thousand dollars per annum, payable monthly. The superintendent of immigration shall be an officer in the Treasury Department, under the control and supervision of the Secretary of the Treasury, to whom he shall make annual reports in writing of the transactions of his office, together with such special reports, in writing, as the Secretary of the Treasury shall require. The Secretary shall provide the superintendent with a suitably furnished office in the city of Washington, and with such books of record and facilities for the discharge of the duties of his office as may be necessary. He shall have a chief clerk at a salary of two thousand dollars per annum, and two first-class clerks.

SEC. 8. That upon the arrival by water at any place within the United States of any alien immigrants it shall be the duty of the commanding officer and the agents of the steam or sailing vessel by which they came to report the name, nationality, last residence, and destination of every such alien, before any of them are landed, to the proper inspection officers, who shall thereupon go or send competent assistants on board such vessel and there inspect all such aliens, or the inspection officers may order a temporary removal of such aliens for examination at a designated time and place, and then and there detain them until a thorough inspection is made. But such a removal shall not be considered a landing during the pendency of such examination. The medical examination shall be made by surgeons of the Marine-Hospital Service. In cases where the services of a marine-hospital surgeon can not be obtained without causing unreasonable delay, the inspector may cause an alien to be examined by a civil surgeon and the Secretary of the Treasury shall fix the compensation for such examination. The inspection officers and their assistants shall have power to administer oaths, and to take and consider testimony touching the right of such aliens to enter the United States, all of which shall be entered of record. During such inspection after temporary removal the superintendent shall cause such aliens to be properly housed, fed, and cared for, and also, in his discretion, such as are delayed in proceeding to their destination after inspection. All decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury. It shall be the duty of the aforesaid officers and agents of such vessel to adopt due precautions to prevent the landing of any alien immigrant at any place or time other than that designated by the inspection officers, and any such officer or agent or person in charge of such vessel who shall either knowingly or negligently land or permit to land any alien immigrant at any place or time other than that designated by the inspection officers, shall be deemed guilty of a misdemeanor and punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment.

That the Secretary of the Treasury may prescribe rules for inspection along the borders of Canada, British Columbia, and Mexico. so as not to obstruct or unnecessarily delay, impede, or annoy passengers in ordinary travel between said countries: *Provided*, That not exceeding one inspector shall be appointed for each customs district, and whose salary shall not exceed twelve hundred dollars per year.

All duties imposed and powers conferred by the second section of the act of August third, eighteen hundred and eighty-two, upon State commissions, boards, or officers acting under contract with the Secretary of the Treasury shall be performed and exercised, as occasion may arise, by the inspection officers of the United States.

SEC. 9. That for the preservation of the peace and in order that arrests may be made for crimes under the laws of the States where the various United States immigrant stations are located, the officials in charge of such stations as occasion may require shall admit therein the proper State and municipal officers charged with the enforcement of such laws, and for the purposes of this section the jurisdiction of such officers and of the local courts shall extend over such stations.

SEC. 10. That all aliens who may unlawfully come into the United States shall, if practicable, be immediately sent back on the vessel by which they were brought in. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessel on which such aliens came; and if any master, agent, consignee, or owner of such vessel shall refuse to receive back on board the vessel such aliens, or shall neglect to detain them thereon, or shall refuse or neglect to return them to the port from which they came, or to pay the cost of their maintenance while on land, such master, agent, consignee, or owner shall be deemed guilty of a misdemeanor, and shall be punished by a fine not less than three hundred dollars for each and every offense; and any such vessel shall not have clearance from any port of the United States while any such fine is unpaid.

SEC. 11. That any alien who shall come into the United States in violation of law may be returned as by law provided, at any time within one year thereafter, at the expense of the person or persons, vessel, transportation company, or corporation bringing such alien into the United States, and if that can not be done, then at the expense of the United States, and any alien who becomes a public charge within one year after his arrival in the United States from causes existing prior to his landing therein shall be deemed to have come in violation of law and shall be returned as aforesaid.

SEC. 12. That nothing contained in this act shall be construed to affect any prosecution or other proceeding, criminal or civil, begun under any existing act or any acts hereby amended, but such prosecution or other proceedings, criminal or civil, shall proceed as if this act had not been passed.

SEC. 13. That the circuit and district courts of the United States are hereby invested with full and concurrent jurisdiction of all causes, civil and criminal, arising under any of the provisions of this act, and this act shall go into effect on the first day of April, eighteen hundred and ninety-one.

Approved March 3, 1891.

ACT OF MARCH 3, 1893.

AN ACT to facilitate the enforcement of the immigration and contract-labor laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in addition to conforming to all present requirements of law, upon the arrival of any alien immigrants by water at any port within the United States, it shall be the duty of the master or commanding officer of the steamer or sailing vessel having said immigrants on board to deliver to the proper inspector of immigration at the port lists or manifests made at the time and place of embarkation of such alien immigrants on board such steamer or vessel, which shall, in answer to questions at the top of said lists, state as to each immigrant the full name, age, and sex, whether married or single; the calling or occupation; whether able to read or write; the nationality; the last residence; the seaport for landing in the United States; the final destination, if any, beyond the seaport of landing; whether having a ticket through to such final destination; whether the immigrant has paid his own passage, or whether it has been paid by other persons or by any corporation, society, municipality, or government; whether in possession of money, and if so, whether upward of thirty dollars and how much if thirty dollars or less; whether going to join a relative, and if so, what relative and his name and address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or supported by charity; whether a polygamist; whether under contract, express or implied, to perform labor in the United States; and what is the immigrant's condition of health mentally and physically, and whether deformed or crippled, and if so, from what cause.

SEC. 2. That the immigrants shall be listed in convenient groups and no one list or manifest shall contain more than thirty names. To each immigrant or head of a family shall be given a ticket on which shall be written his name, a number or letter designating the list, and his number on the list, for convenience of identification on arrival. Each list or manifest shall be verified by the signature and the oath or affirmation of the master or commanding officer or of the officer first or second below him in command, taken before the United States consul or consular agent at the port of departure, before the sailing of said vessel, to the effect that he has made a personal examination of each and all of the passengers named therein, and that he has caused the surgeon of said vessel sailing therewith to make a physical examination of each of said passengers, and that from his personal inspection and the report of said surgeon he believes that no one of said passengers is an idiot or insane person, or a pauper or likely to become a public charge, or suffering from a loathsome or dangerous contagious disease, or a person who has been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, or a polygamist, or under a contract or agreement, express or implied, to perform labor in the United States, and that also, according to the best of his knowledge and belief, the information in said list or manifest concerning each of said passengers named therein is correct and true.

SEC. 3. That the surgeon of said vessel sailing therewith shall also

sign each of said lists or manifests before the departure of said vessel, and make oath or affirmation in like manner before said consul or consular agent, stating his professional experience and qualifications as a physician and surgeon, and that he has made a personal examination of each of the passengers named therein and that said list or manifest, according to the best of his knowledge and belief, is full, correct, and true in all particulars relative to the mental and physical condition of said passengers. If no surgeon sails with any vessel bringing alien immigrants, the mental and physical examinations and the verifications of the lists or manifests may be made by some competent surgeon employed by the owners of the vessel.

SEC. 4. That in the case of the failure of said master or commanding officer of said vessel to deliver to the said inspector of immigration lists or manifests, verified as aforesaid, containing the information above required as to all alien immigrants on board, there shall be paid to the collector of customs at the port of arrival the sum of ten dollars for each immigrant qualified to enter the United States concerning whom the above information is not contained in any list as aforesaid, or said immigrants shall not be permitted so to enter the United States, but shall be returned like other excluded persons.

SEC. 5. That it shall be the duty of every inspector of arriving alien immigrants to detain for a special inquiry, under section one of the immigration act of March third, eighteen hundred and ninety-one, every person who may not appear to him to be clearly and beyond doubt entitled to admission, and all special inquiries shall be conducted by not less than four officials acting as inspectors, to be designated in writing by the Secretary of the Treasury or the superintendent of immigration, for conducting special inquiries; and no immigrant shall be admitted on special inquiry except after a favorable decision made by at least three of said inspectors; and any decision to admit shall be subject to appeal by any dissenting inspector to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury, as provided in section eight of said immigration act of March third, eighteen hundred and ninety-one.

SEC. 6. That section five of the act of March third, eighteen hundred and ninety-one, "in amendment of the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor," is hereby amended by striking out the words "second proviso" where they first occur in said section and inserting the words "first proviso" in their place; and section eight of said act is hereby so amended that the medical examinations of arriving immigrants to be made by surgeons of the Marine-Hospital Service may be made by any regular medical officers of such Marine-Hospital Service detailed therefor by the Secretary of the Treasury; and civil surgeons shall only be employed temporarily from time to time for specific emergencies.

SEC. 7. That no bond or guaranty, written or oral, that an alien immigrant shall not become a public charge shall be received from any person, company, corporation, charitable or benevolent society or association, unless authority to receive the same shall in each special case be given by the superintendent of immigration, with the written approval of the Secretary of the Treasury.

SEC. 8. That all steamship or transportation companies, and other owners of vessels, regularly engaged in transporting alien immigrants

to the United States, shall twice a year file a certificate with the Secretary of the Treasury that they have furnished to be kept conspicuously exposed to view in the office of each of their agents in foreign countries authorized to sell emigrant tickets, a copy of the law of March third, eighteen hundred and ninety-one, and of all subsequent laws of this country relative to immigration, printed in large letters, in the language of the country where the copy of the law is to be exposed to view, and that they have instructed their agents to call the attention thereto of persons contemplating emigration before selling tickets to them; and in case of the failure for sixty days of any such company or any such owners to file such a certificate, or in case they file a false certificate, they shall pay a fine of not exceeding five hundred dollars, to be recovered in the proper United States court, and said fine shall also be a lien upon any vessel of said company or owners found within the United States.

SEC. 9. That after the first day of January, eighteen hundred and ninety-three, all exclusive privileges of exchanging money, transporting passengers or baggage, or keeping eating houses, and all other like privileges in connection with the Ellis Island immigrant station, shall be disposed of after public competition, subject to such conditions and limitations as the Secretary of the Treasury may prescribe.

SEC. 10. That this act shall not apply to Chinese persons; and shall take effect as to vessels departing from foreign ports for ports within the United States after sixty days from the passage of this act.

Approved, March 3, 1893.

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes.

Be it enacted, etc.,

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In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

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"The head money from alien passengers on and after the first day of October next, collected under the act of August third, eighteen hundred and eighty-two, to regulate immigration, shall be one dollar in lieu of the fifty cents as provided in said act. That such head money and all other receipts which shall be collected on and after July first, eighteen hundred and ninety-five, in connection with immigration shall be covered into the Treasury. * * *

"The commissioners of immigration at the several ports shall be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term of four years, unless sooner removed, and until their successors are appointed; and nominations for such offices shall be made to the Senate by the President as soon as practicable after the passage of this act."

Approved, August 18, 1894.

AN ACT making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes, approved March 2, 1895, under the head "Bureau of Immigration," provides:

That the Superintendent of Immigration shall hereafter be designated as Commissioner-General of Immigration, and, in addition to his other duties, shall have charge, under the Secretary of the Treasury, of the administration of the alien contract-labor laws, etc.

ACT OF JUNE 6, 1900.

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.

Be it enacted, etc.,

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and hereafter the Commissioner-General of Immigration, in addition to his other duties, shall have charge of the administration of the Chinese-exclusion law and of the various acts regulating immigration into the United States, its Territories, and the District of Columbia, under the supervision and direction of the Secretary of the Treasury.

Approved, June 6, 1900.

ACT OF MARCH 3, 1903.

AN ACT to regulate the immigration of aliens into the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be levied, collected, and paid a duty of two dollars for each and every passenger not a citizen of the United States, or of the Dominion of Canada, the Republic of Cuba, or of the Republic of Mexico, who shall come by steam, sail, or other vessel from any foreign port to any port within the United States, or by any railway or any other mode of transportation, from foreign contiguous territory to the United States. The said duty shall be paid to the collector of customs of the port or customs district to which said alien passenger shall come, or, if there be no collector at such port or district, then to the collector nearest thereto, by the master, agent, owner, or consignee of every such vessel or transportation line. The money thus collected shall be paid into the United States Treasury and shall constitute a permanent appropriation to be called the "immigrant fund," to be used under the direction of the Secretary of the Treasury to defray the expense of regulating the immigration of aliens into the United States under this Act, including the cost of reports of decisions of the Federal courts, and digests thereof, for the use of the Commissioner-General of Immigration, and the salaries and expenses of all officers, clerks, and employees appointed for the purpose of enforcing the provisions of this Act. The duty imposed by this section shall be a lien upon the vessel which shall bring such aliens to ports of the United States, and shall be a debt in favor of the United States against the owner or owners of such vessels, and the

payment of such duty may be enforced by any legal or equitable remedy; the head tax herein provided for shall not be levied upon aliens in transit through the United States nor upon aliens who have once been admitted into the United States and have paid the head tax who later shall go in transit from one part of the United States to another through foreign contiguous territory: *Provided*, That the Commissioner-General of Immigration, under the direction or with the approval of the Secretary of the Treasury, by agreement with transportation lines, as provided in section thirty-two of this Act, may arrange in some other manner for the payment of the duty imposed by this section upon aliens seeking admission overland, either as to all or as to any such aliens.

SEC. 2. That the following classes of aliens shall be excluded from admission into the United States: All idiots, insane persons, epileptics, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with a loathsome or with a dangerous contagious disease; persons who have been convicted of a felony or other crime or misdemeanor involving moral turpitude; polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials; prostitutes, and persons who procure or attempt to bring in prostitutes or women for the purpose of prostitution; those who have been, within one year from the date of the application for admission to the United States, deported as being under offers, solicitations, promises or agreements to perform labor or service of some kind therein; and also any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes; but this section shall not be held to prevent persons living in the United States from sending for a relative or friend who is not of the foregoing excluded classes: *Provided*, That nothing in this Act shall exclude persons convicted of an offense purely political, not involving moral turpitude: *And provided further*, That skilled labor may be imported, if labor of like kind unemployed can not be found in this country: *And provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants.

SEC. 3. That the importation into the United States of any woman or girl for the purposes of prostitution is hereby forbidden; and whoever shall import or attempt to import any woman or girl into the United States for the purposes of prostitution, or shall hold or attempt to hold, any woman or girl for such purposes in pursuance of such illegal importation shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not less than one nor more than five years and pay a fine not exceeding five thousand dollars.

SEC. 4. That it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to assist or encourage the importation or

migration of any alien into the United States, in pursuance of any offer, solicitation, promise, or agreement, parole or special, expressed or implied, made previous to the importation of such alien to perform labor or service of any kind, skilled or unskilled, in the United States.

SEC. 5. That for every violation of any of the provisions of section four of this Act the person, partnership, company, or corporation violating the same, by knowingly assisting, encouraging, or soliciting the migration or importation of any alien to the United States to perform labor or service of any kind by reason of any offer, solicitation, promise, or agreement, express or implied, parole or special, to or with such alien shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States, or by any person who shall first bring his action therefor in his own name and for his own benefit, including any such alien thus promised labor or service of any kind as aforesaid, as debts of like amount are now recovered in the courts of the United States; and separate suits may be brought for each alien thus promised labor or service of any kind as aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit when brought by the United States.

SEC. 6. That it shall be unlawful and be deemed a violation of section four of this Act to assist or encourage the importation or migration of any alien by a promise of employment through advertisements printed and published in any foreign country; and any alien coming to this country in consequence of such an advertisement shall be treated as coming under a promise or agreement as contemplated in section two of this Act, and the penalties imposed by section five of this Act shall be applicable to such a case: *Provided*, That this section shall not apply to States or Territories, the District of Columbia, or places subject to the jurisdiction of the United States advertising the inducements they offer for immigration thereto, respectively.

SEC. 7. That no transportation company or owner or owners of vessels or others engaged in transporting aliens into the United States, shall, directly or through agents, either by writing, printing, or oral representations, solicit, invite, or encourage the immigration of any aliens into the United States except by ordinary commercial letters, circulars, advertisements, or oral representations, stating the sailings of their vessels and terms and facilities of transportation therein; and for a violation of this provision any such transportation company and any such owner or owners of vessels, and all others engaged in transporting aliens to the United States, and the agents by them employed, shall be subjected to the penalties imposed by section five of this Act.

SEC. 8. That any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or who shall attempt, by himself or through another, to bring into or land in the United States, by vessel or otherwise, any alien not duly admitted by an immigrant inspector, or not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine not exceeding one thousand dollars for each and every alien so landed or attempted to be landed, or by imprisonment for a term not less than three months nor more than two years, or by both such fine and imprisonment.

SEC. 9. That it shall be unlawful for any person, including any trans-

portation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease; and if it shall appear to the satisfaction of the Secretary of the Treasury that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers while any such fine imposed upon it remains unpaid, nor shall such fine be remitted.

SEC. 10. That the decision of the board of special inquiry, hereinafter provided for, based upon the certificate of the examining medical officer, shall be final as to the rejection of aliens afflicted with a loathsome or with a dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under section two of this Act.

SEC. 11. That upon the certificate of a medical officer of the United States Marine-Hospital Service to the effect that a rejected alien is helpless from sickness, physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by such rejected alien, the master, agent, owner, or consignee of the vessel in which such alien and accompanying alien are brought shall be required to return said alien and accompanying alien in the same manner as vessels are required to return other rejected aliens.

SEC. 12. That upon the arrival of any alien by water at any port within the United States it shall be the duty of the master or commanding officer of the steamer, sailing or other vessel, having said alien on board to deliver to the immigration officers at the port of arrival lists or manifests made at the time and place of embarkation of such alien on board such steamer or vessel, which shall, in answer to questions at the top of said lists, state as to each alien the full name, age, and sex; whether married or single; the calling or occupation; whether able to read or write; the nationality; the race; the last residence; the seaport for landing in the United States; the final destination, if any, beyond the port of landing; whether having a ticket through to such final destination; whether the alien has paid his own passage, or whether it has been paid by any other person or by any corporation, society, municipality, or government, and if so, by whom; whether in possession of fifty dollars, and if less, how much; whether going to join a relative or friend, and if so, what relative or friend and his name and complete address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or an institution or hospital for the care and treatment of the insane or supported by charity; whether a polygamist; whether an anarchist; whether coming by reason of any offer, solicitation, promise or agreement, expressed or implied, to perform labor in the United States, and what is the alien's condition of health mental and physical, and whether deformed or crippled, and if so, for how long and from what cause.

SEC. 13. That all aliens arriving by water at the ports of the United States shall be listed in convenient groups, and no one list or manifest shall contain more than thirty names. To each alien or head of a family shall be given a ticket on which shall be written his name, a number or letter designating the list in which his name, and so forth, is contained, and his number on said list, for convenience of identification on arrival. Each list or manifest shall be verified by the signature and the oath or affirmation of the master or commanding officer or the first or second below him in command, taken before an immigration officer at the port of arrival, to the effect that he has caused the surgeon of said vessel sailing therewith to make a physical and oral examination of each of said aliens, and that from the report of said surgeon and from his own investigation he believes that no one of said aliens is an idiot, or insane person, or a pauper, or is likely to become a public charge, or is suffering from a loathsome or a dangerous contagious disease, or is a person who has been convicted of a felony or other crime or misdemeanor involving moral turpitude, or a polygamist, or an anarchist, or under promise or agreement, express or implied, to perform labor in the United States, or a prostitute, and that also, according to the best of his knowledge and belief, the information in said lists or manifests concerning each of said aliens named therein is correct and true in every respect.

SEC. 14. That the surgeon of said vessel sailing therewith shall also sign each of said lists or manifests and make oath or affirmation in like manner before an immigration officer at the port of arrival, stating his professional experience and qualifications as a physician and surgeon, and that he has made a personal examination of each of the said aliens named therein, and that the said list or manifest, according to the best of his knowledge and belief, is full, correct, and true in all particulars relative to the mental and physical condition of said aliens. If no surgeon sails with any vessel bringing aliens the mental and physical examinations and the verifications of the lists or manifests shall be made by some competent surgeon employed by the owners of the said vessel.

SEC. 15. That in the case of the failure of the master or commanding officer of any vessel to deliver to the said immigration officers lists or manifests of all aliens on board thereof as required in sections twelve, thirteen, and fourteen of this Act, he shall pay to the collector of customs at the port of arrival the sum of ten dollars for each alien concerning whom the above information is not contained in any list as aforesaid.

SEC. 16. That upon the receipt by the immigration officers at any port of arrival of the lists or manifests of aliens provided for in sections twelve, thirteen, and fourteen of this Act it shall be the duty of said officers to go or send competent assistants to the vessels to which said lists or manifests refer and there inspect all such aliens, or said immigration officers may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve the transportation lines, masters, agents, owners, or consignees of the vessel upon which such aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would, under the provisions of this Act, bind the said transportation lines, masters, agents, owners, or consignees: *Provided*, That where

a suitable building is used for the detention and examination of aliens the immigration officials shall there take charge of such aliens, and the transportation companies, masters, agents, owners, and consignees of the vessels bringing such aliens shall be relieved of the responsibility for their detention thereafter until the return of such aliens to their care.

SEC. 17. That the physical and mental examination of all arriving aliens shall be made by medical officers of the United States Marine-Hospital Service, who shall have had at least two years' experience in the practice of their profession since receiving the degree of doctor of medicine and who shall certify for the information of the immigration officers and the boards of special inquiry hereinafter provided for, any and all physical and mental defects or diseases observed by said medical officers in any such alien, or, should medical officers of the United States Marine-Hospital Service be not available, civil surgeons of not less than four years' professional experience may be employed in such emergencies for the said service, upon such terms as may be prescribed by the Commissioner-General of Immigration, under the direction or with the approval of the Secretary of the Treasury. The United States Public Health and Marine-Hospital Service shall be reimbursed by the Immigration Service for all expenditures incurred in carrying out the medical inspection of aliens under regulations of the Secretary of the Treasury.

SEC. 18. That it shall be the duty of the owners, officers and agents of any vessel bringing an alien to the United States to adopt due precautions to prevent the landing of any such alien from such vessel at any time or place other than that designated by the immigration officers, and any such owner, officer, agent, or person in charge of such vessel who shall land or permit to land any alien at any time or place other than that designated by the immigration officers, shall be deemed guilty of a misdemeanor, and shall on conviction be punished by a fine for each alien so permitted to land of not less than one hundred nor more than one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment, and every such alien so landed shall be deemed to be unlawfully in the United States and shall be deported, as provided by law.

SEC. 19. That all aliens brought into this country in violation of law shall, if practicable, be immediately sent back to the countries whence they respectively came on the vessels bringing them. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came; and if any master, person in charge, agent, owner, or consignee of any such vessels shall refuse to receive back on board thereof, or of any other vessel owned by the same interest, such aliens, or shall neglect to detain them thereon, or shall refuse or neglect to return them to the foreign port from which they came, or to pay the cost of their maintenance while on land, such master, person in charge, agent, owner, or consignee shall be deemed guilty of a misdemeanor and shall, on conviction, be punished by a fine not less than three hundred dollars for each and every such offense; and no vessel shall have clearance from any port of the United States while any such fine is unpaid: *Provided*, That the Commissioner-General of Immigration, under the direction or with the approval of the Secretary of the Treasury, may suspend, upon conditions to be pre-

scribed by the Commissioner-General, the deportation of any alien found to have come under promise or agreement of labor or service of any kind if, in his judgment, the testimony of such alien is necessary on behalf of the United States Government in the prosecution of offenders against the provisions of sections four and five of this Act: *Provided*, That the cost of maintenance of any person so detained resulting from such suspension of deportation shall be paid from the "immigrant fund," but no alien certified, as provided in section seventeen of this Act, to be suffering with a loathsome or with a dangerous contagious disease other than one of a quarantinable nature, shall be permitted to land for medical treatment thereof in the hospitals of the United States.

SEC. 20. That any alien who shall come into the United States in violation of law, or who shall be found a public charge therein, from causes existing prior to landing, shall be deported as hereinafter provided to the country whence he came at any time within two years after arrival at the expense, including one-half of the cost of inland transportation to the port of deportation, of the person bringing such alien into the United States, or, if that can not be done, then at the expense of the immigrant fund referred to in section one of this Act.

SEC. 21. That in case the Secretary of the Treasury shall be satisfied that an alien has been found in the United States in violation of this Act he shall cause such alien, within the period of three years after landing or entry therein, to be taken into custody and returned to the country whence he came, as provided in section twenty of this Act, or, if that can not be so done, at the expense of the immigrant fund provided for in section one of this Act; and neglect or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of the Treasury to take on board, guard safely, and return to the country whence he came any alien ordered to be deported under the provisions of this section shall be punished by the imposition of the penalties prescribed in section nineteen of this Act.

SEC. 22. That the Commissioner-General of Immigration, in addition to such other duties as may by law be assigned to him, shall, under the direction of the Secretary of the Treasury, have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder. He shall establish such rules and regulations, prescribe such forms of bonds, reports, entries, and other papers, and shall issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act and for protecting the United States and aliens migrating thereto from fraud and loss, and shall have authority to enter into contracts for the support and relief of such aliens as may fall into distress or need public aid; all under the direction or with the approval of the Secretary of the Treasury. And it shall be the duty of the Commissioner-General of Immigration to detail officers of the immigration service from time to time as may be necessary, in his judgment, to secure information as to the number of aliens detained in the penal, reformatory, and charitable institutions (public and private) of the several States and Territories, the District of Columbia, and other territory of the United States, and to inform the officers of such institutions of the provisions

of law in relation to the deportation of aliens who have become public charges: *Provided*, That the Commissioner-General of Immigration may, with the approval of the Secretary of the Treasury, whenever in his judgment such action may be necessary to accomplish the purposes of this Act, detail immigration officers for temporary service in foreign countries.

SEC. 23. That the duties of the commissioners of immigration shall be of an administrative character, to be prescribed in detail by regulations prepared, under the direction or with the approval of the Secretary of the Treasury.

SEC. 24. That immigrant inspectors and other immigration officers, clerks, and employees shall hereafter be appointed, and their compensation fixed and raised or decreased from time to time, by the Secretary of the Treasury, upon the recommendation of the Commissioner-General of Immigration and in accordance with the provisions of the civil-service Act of January sixteenth, eighteen hundred and eighty-three: *Provided*, That nothing herein contained shall be construed to alter the mode of appointing commissioners of immigration at the several ports of the United States as provided by the sundry civil appropriation Act approved August eighteenth, eighteen hundred and ninety-four, or the official status of such commissioners heretofore appointed. Immigration officers shall have power to administer oaths and to take and consider testimony touching the right of any alien to enter the United States, and, where such action may be necessary, to make a written record of such testimony, and any person to whom such an oath has been administered under the provisions of this Act who shall knowingly or willfully give false testimony or swear to any false statement in any way affecting or in relation to the right of an alien to admission to the United States shall be deemed guilty of perjury and be punished as provided by section fifty-three hundred and ninety-two, United States Revised Statutes. The decision of any such officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer, and such challenge shall operate to take the alien whose right to land is so challenged before a board of special inquiry for its investigation. Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry.

SEC. 25. That such boards of special inquiry shall be appointed by the commissioners of immigration at the various ports of arrival as may be necessary for the prompt determination of all cases of aliens detained at such ports under the provisions of law. Such boards shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner-General of Immigration, with the approval of the Secretary of the Treasury, shall from time to time designate as qualified to serve on such boards: *Provided*, That at ports where there are fewer than three immigrant inspectors, the Secretary of the Treasury, upon recommendation of the Commissioner-General of Immigration, may designate other United States officials for service on such boards of special inquiry. Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or be deported. All hearings before boards shall be separate and apart from the public, but the said boards shall keep complete permanent records of their proceedings and of all such testimony as

may be produced before them; and the decision of any two members of a board shall prevail and be final, but either the alien or any dissenting member of said board may appeal, through the commissioner of immigration at the port of arrival and the Commissioner-General of Immigration, to the Secretary of the Treasury, whose decision shall then be final; and the taking of such appeal shall operate to stay any action in regard to the final disposal of the alien whose case is so appealed until the receipt by the commissioner of immigration at the port of arrival of such decision.

SEC. 26. That no bond or guaranty, written or oral, that an alien shall not become a public charge shall be received from any person, company, corporation, charitable or benevolent society or association unless authority to receive the same shall in each special case be given by the Commissioner-General of Immigration, with the written approval of the Secretary of the Treasury.

SEC. 27. That no suit or proceeding for a violation of the provisions of this Act shall be settled, compromised, or discontinued without the consent of the court in which it is pending, entered of record, with the reasons therefor.

SEC. 28. That nothing contained in this Act shall be construed to affect any prosecution or other proceeding, criminal or civil, begun under any existing Act or any Acts hereby amended, but such prosecutions or other proceedings, criminal or civil, shall proceed as if this Act had not been passed.

SEC. 29. That the circuit and district courts of the United States are hereby invested with full and concurrent jurisdiction of all causes, civil and criminal, arising under any of the provisions of this Act.

SEC. 30. That after the first day of January, nineteen hundred and three, all exclusive privileges of exchanging money, transporting passengers or baggage, or keeping eating houses, and all other like privileges in connection with any United States immigration station, shall be disposed of after public competition, subject to such conditions and limitations as the Commissioner-General of Immigration, under the direction or with the approval of the Secretary of the Treasury, may prescribe: *Provided*, That no intoxicating liquors shall be sold in any such immigrant station; that all receipts accruing from the disposal of such exclusive privileges as herein provided shall be paid into the United States Treasury to the credit of the immigrant fund provided for in section one of this Act.

SEC. 31. That for the preservation of the peace, and in order that arrests may be made for crimes under the laws of the States and Territories of the United States where the various immigrant stations are located, the officers in charge of such stations, as occasion may require, shall admit therein the proper State and municipal officers charged with the enforcement of such laws, and for the purposes of this section the jurisdiction of such officers and of the local courts shall extend over such stations.

SEC. 32. That the Commissioner-General of Immigration, under the direction or with the approval of the Secretary of the Treasury, shall prescribe rules for the entry and inspection of aliens along the borders of Canada and Mexico, so as not to unnecessarily delay, impede, or annoy passengers in ordinary travel between the United States and said countries, and shall have power to enter into contracts with foreign transportation lines for the same purpose.

SEC. 33. That for the purposes of this Act the words "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States and any waters, territory or other place now subject to the jurisdiction thereof.

SEC. 34. That no intoxicating liquors of any character shall be sold within the limits of the Capitol building of the United States.

SEC. 35. That the deportation of aliens arrested within the United States after entry and found to be illegally therein, provided for in this Act, shall be to the trans-Atlantic or trans-Pacific ports from which said aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which said aliens embarked for such territory.

SEC. 36. That all Acts and parts of Acts inconsistent with this Act are hereby repealed: *Provided*, That this Act shall not be construed to repeal, alter, or amend existing laws relating to the immigration, or exclusion of Chinese persons or persons of Chinese descent.

SEC. 37. That whenever an alien shall have taken up his permanent residence in this country, and shall have filed his preliminary declaration to become a citizen, and thereafter shall send for his wife or minor children to join him, if said wife, or either of said children, shall be found to be affected with any contagious disorder, and if it is proved that said disorder was contracted on board the ship in which they came, and is so certified by the examining surgeon at the port of arrival, such wife or children shall be held, under such regulations as the Secretary of the Treasury shall prescribe, until it shall be determined whether the disorder will be easily curable, or whether they can be permitted to land without danger to other persons; and they shall not be deported until such facts have been ascertained.

SEC. 38. That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any Territory or place subject to the jurisdiction thereof. This section shall be enforced by the Secretary of the Treasury under such rules and regulations as he shall prescribe.

That any person who knowingly aids or assists any such person to enter the United States or any Territory or place subject to the jurisdiction thereof, or who connives or conspires with any person or persons to allow, procure, or permit any such person to enter therein, except pursuant to such rules and regulations made by the Secretary of the Treasury, shall be fined not more than five thousand dollars, or imprisoned for not less than one nor more than five years, or both.

SEC. 39. That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized

government, because of his or their official character, or who has violated any of the provisions of this Act, shall be naturalized or be made a citizen of the United States. All courts and tribunals and all judges and officers thereof having jurisdiction of naturalization proceedings or duties to perform in regard thereto shall, on the final application for naturalization, make careful inquiry into such matters, and before issuing the final order or certificate of naturalization cause to be entered of record the affidavit of the applicant and of his witnesses so far as applicable, reciting and affirming the truth of every material fact requisite for naturalization. All final orders and certificates of naturalization hereafter made shall show on their face specifically that said affidavits were duly made and recorded, and all orders and certificates that fail to show such facts shall be null and void.

That any person who purposely procures naturalization in violation of the provisions of this section shall be fined not more than five thousand dollars, or shall be imprisoned not less than one nor more than ten years, or both, and the court in which such conviction is had shall thereupon adjudge and declare the order or decree and all certificates admitting such person to citizenship null and void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

That any person who knowingly aids, advises, or encourages any such person to apply for or to secure naturalization or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not less than one nor more than ten years, or both.

The foregoing provisions concerning naturalization shall not be enforced until ninety days after the approval hereof.

Approved, March 3, 1903.

AN ACT to establish the Department of Commerce and Labor.

* * * * * * * *

SEC. 2. That there shall be in said Department an Assistant Secretary of Commerce and Labor, to be appointed by the President, who shall receive a salary of five thousand dollars a year. He shall perform such duties as shall be prescribed by the Secretary or required by law. There shall also be one chief clerk and a disbursing clerk and such other clerical assistants as may from time to time be authorized by Congress; and the Auditor for the State and other Departments shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Commerce and Labor, and of all bureaus and offices under his direction, all accounts relating to the Light-House Board, Steamboat-Inspection Service, Immigration, Navigation, Alaskan fur-seal fisheries, the National Bureau of Standards, Coast and Geodetic Survey, Census, Department of Labor, Fish Commission and to all other business within the jurisdiction of the Department of Commerce and Labor, and certify the balances arising thereon to the Division of Bookkeeping and Warrants and send forthwith a copy of each certificate to the Secretary of Commerce and Labor.

* * * * * * *

SEC. 4. That the following-named offices, bureaus, divisions, and branches of the public service, now and heretofore under the jurisdiction of the Department of the Treasury, and all that pertains to the same, known as the Light-House Board, the Light-House Establishment, the Steamboat-Inspection Service, the Bureau of Navigation, the United States Shipping Commissioners, the National Bureau of Standards, the Coast and Geodetic Survey, the Commissioner-General of Immigration, the commissioners of immigration, the Bureau of Immigration, the immigration service at large, and the Bureau of Statistics, be, and the same hereby are, transferred from the Department of the Treasury to the Department of Commerce and Labor, and the same shall hereafter remain under the jurisdiction and supervision of the last-named Department; * * * .

* * * * * * *

SEC. 7. That the jurisdiction, supervision and control now possessed and exercised by the Department of the Treasury over the fur-seal, salmon and other fisheries of Alaska and over the immigration of aliens into the United States, its waters, territories and any place subject to the jurisdiction thereof, are hereby transferred and vested in the Department of Commerce and Labor: *Provided*, That nothing contained in this Act shall be construed to alter the method of collecting and accounting for the head-tax prescribed by section one of the Act entitled "An Act to regulate immigration," approved August third, eighteen hundred and eighty-two. That the authority, power and jurisdiction now possessed and exercised by the Secretary of the Treasury by virtue of any law in relation to the exclusion from and the residence within the United States, its territories and the District of Columbia, of Chinese and persons of Chinese descent, are hereby transferred to and conferred upon the Secretary of Commerce and Labor, and the authority, power and jurisdiction in relation thereto now vested by law or treaty in the collectors of customs and the collectors of internal revenue, are hereby conferred upon and vested in such officers under the control of the Commissioner-General of Immigration, as the Secretary of Commerce and Labor may designate therefor.

* * * * * * *

SEC. 13. That this Act shall take effect and be in force from and after its passage: *Provided, however*, That the provisions of this Act other than those of section twelve in relation to the transfer of any existing office, bureau, division, officer or other branch of the public service or authority now conferred thereon, to the Department of Commerce and Labor shall take effect and be in force on the first day of July, nineteen hundred and three, and not before.

Approved, February 14, 1903.

AN ACT granting additional quarantine powers and imposing additional duties upon the Marine-Hospital Service.

* * * * * * *

SEC. 7. That whenever it shall be shown to the satisfaction of the President that by reason of the existence of cholera, or other infectious or contagious diseases, in a foreign country there is serious dan-

ger of the introduction of the same into the United States, and that notwithstanding the quarantine defense this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce the same is demanded, in the interest of the public health, the President shall have power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate and for such period of time as he may deem necessary.

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Act approved February 15, 1893 (27 Stat. L., p. 449).

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Supreme Court of the United States.

No. 561.—October Term, 1903.

The United States ex rel. John Turner, Appellant, *vs.* William Williams, United States Commissioner of Immigration for the Port of New York.	Appeal from the Circuit Court of the United States for the Southern District of New York.

[May 16, 1904.]

John Turner filed in the United States Circuit Court for the Southern District of New York, October 26, 1903, a petition alleging—

"First. That on October 23 in the city of New York your relator was arrested by divers persons claiming to be acting by authority of the Government of the United States and was by said persons conveyed to the United States immigration station at Ellis Island in the harbor of New York, and is now there imprisoned by the Commissioner of Immigration of the port of New York.

"Second. Your relator is so imprisoned by virtue of a warrant sworn out by the Secretary of the Department of Commerce and Labor, which warrant charges your relator with being an anarchist and being unlawfully within the United States in violation of section 2 and section 20 of the immigration laws of the United States, as amended by act of March 3, 1903.

"Third. Upon information and belief that a special board of inquiry consisting of Charles Semsey, Captain Weldon, supervising inspector, and L. C. Stewart, all of whom are executive officers of the United States, has inquired into your relator's case and decided that your relator is an anarchist, and is in the United States in violation of law within the meaning of the act of March 3, 1903.

"Fourth. Your relator denies that he is an anarchist within the meaning of the immigration laws of the United States, and states to the court that about six years ago he took out his first papers of application for citizenship in this country, and that he has at no times been engaged as a propagandist of doctrines inciting to or advising violent overthrow of government, but for about six years last past he has been the paid organizer of the retail clerks of Great Britain and his business in this country is solely to promote the interests of organized labor, and that he has at all times conducted himself as a peaceful and law abiding citizen.

"By reason of all of which facts your relator says that his imprisonment is illegal, in that he is being deprived of his liberty without due process of law and is being denied equal protection of the laws, contrary to the Constitution and laws of the United States."

And praying for a writ of *habeas corpus* to the Commissioner of Immigration of the port of New York, and also for a writ of certiorari to bring up the record of the Board of Inquiry which adjudged him to be an anarchist and in the United States in violation of the immigration laws. The commissioner made return under oath and also certified the record of the Board of Inquiry.

The return stated—

"That the above named John Turner is an alien, a subject of the Kingdom of Great Britain and Ireland; that said alien came to the United States from England on or about ten days prior to October 24, 1903, as deponent is informed and believes.

"Said John Turner was arrested in the city of New York on or about October 23, 1903, under a warrant issued by the Secretary of the Department of Commerce and Labor of the United States, and was taken to the Ellis Island immigration station, where he was examined by a board of special inquiry, duly constituted according to law, upon his right to remain in this country, and that said alien was by said board found to be an alien anarchist, and was by unanimous decision of said board ordered to be deported to the country from whence he came as a person within the United States in violation of law. That on October 26, 1903, said alien appealed from the said decision of the board of special inquiry to the Secretary of Commerce and Labor, who dismissed the appeal and directed that said alien be deported to the country from whence he came upon the ground that said alien is an anarchist and a person who disbelieves in and who is opposed to all organized government and was found to be in the United States in violation of law.

"That annexed hereto is a copy of the above-mentioned warrant for the arrest and deportation of said John Turner, and copies of the minutes of said hearing before the board of special inquiry, and a copy of the order or decision of the Secretary of Commerce and Labor dismissing said appeal and again directing deportation. That said John Turner is now held in deponent's custody at the Ellis Island immigrant station pending deportation to the country from whence he came in accordance with the above-mentioned decision or order of the Secretary of Commerce and Labor."

The warrant issued by the Secretary was addressed to certain United States immigrant inspectors, and recited that from the proofs submitted the Secretary was satisfied that Turner, an alien, anarchist, came into this country contrary to the prohibition of the act of Congress of March 3, 1903, and commanded them to take him into custody and return him to the country from whence he came at the expense of the United States. On appeal to the Secretary the record of proceedings before the board of inquiry was transmitted, and the Secretary held: "The evidence shows that the appellant declined to give exact information as to the manner in which he secured admission to this country, although he swears that he arrived here about ten days ago. He admits that he is an anarchist and an advocate of anarchistic principles, which brings him within the class

defined by section 38 of the act approved March 3, 1903. In view of these facts, the appeal is dismissed and you are directed to deport the said John Turner in conformity with warrant now in your hands for execution."

The hearing before the Board of Inquiry was had October 24, 1903, and it appeared from the minutes thereof that Turner testified that he was an Englishman; that he had been in the United States ten days, and that he did not come through New York, but declined to either affirm or deny that he arrived *via* Canada; that he would not undertake to deny that he had in the lecture delivered in New York, October 23, declared himself to be an anarchist, which, he said, was a statement that he would make; and that the testimony of the inspectors was about correct. That evidence gave extracts from the address referred to including these: "Just imagine what a universal tie-up would mean. What would it mean in New York city alone if this idea of solidarity were spread through the city? If no work was being done, if it were Sunday for a week or a fortnight, life in New York would be impossible, and the workers, gaining audacity, would refuse to recognize the authority of their employers and eventually take to themselves the handling of the industries. . . . All over Europe they are preparing for a general strike, which will spread over the entire industrial world. Everywhere the employers are organizing, and to me, at any rate, as an anarchist, as one who believes that the people should emancipate themselves, I look forward to this struggle as an opportunity for the workers to assert the power that is really theirs."

Certain papers were found on Turner, one of them being a list of his proposed series of lectures, (which, when the warrant was in execution, he rolled up and threw away,) the subjects including: "The legal murder of 1887," and "The essentials of anarchism;" notices of meetings, one of a mass-meeting November 9, at which "Speeches will be delivered by John Turner in English, John Most in German, and several other speakers. Don't miss this opportunity to hear the truth expressed about the great Chicago tragedy on the eleventh of November, 1887;" and another, stating: "It may be interesting to all that Turner has recently refused to accept a candidacy to Parliament because of his anarchistic principles."

A demurrer was interposed to the return, and, after argument, the Circuit Court dismissed the writ and remanded the petitioner. 126 Fed. Rep. 253. From this order an appeal was prayed and allowed to this court, and, having been docketed, petitioner was admitted to bail.

Sections 2 and 38 of the act of March 3, 1903, entitled "An act to regulate the immigration of aliens into the United States," (32 Stat. 1213, c. 1012,) are as follows:

"SEC. 2. That the following classes of aliens shall be excluded from admission into the United States: All idiots, insane persons, epileptics, and persons who have been insane within five years previous; persons who

have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with a loathsome or with a dangerous contagious disease; persons who have been convicted of a felony or other crime or misdemeanor involving moral turpitude; polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all governments or of all forms of law, or the assassination of public officials; prostitutes, and persons who procure or attempt to bring in prostitutes or women for the purpose of prostitution; those who have been, within one year from the date of the application for admission to the United States, deported as being under offers, solicitations, promises or agreements to perform labor or service of some kind therein; and also any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes; but this section shall not be held to prevent persons living in the United States from sending for a relative or friend who is not of the foregoing excluded classes: *Provided*, That nothing in this act shall exclude persons convicted of an offense purely political, not involving moral turpitude: *And provided further*, That skilled labor may be imported, if labor of like kind unemployed cannot be found in this country: *And provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants."

"SEC. 38. That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any Territory or place subject to the jurisdiction thereof. This section shall be enforced by the Secretary of the Treasury under such rules and regulations as he shall prescribe.

"That any person who knowingly aids or assists any such person to enter the United States or any Territory or place subject to the jurisdiction thereof, or who connives or conspires with any person or persons to allow, procure, or permit any such person to enter therein, except pursuant to such rules and regulations made by the Secretary of the Treasury, shall be fined not more than five thousand dollars, or imprisoned for not less than one nor more than five years, or both."

By the act of February 14, 1903, (32 Stat. 825, c. 552,) "To establish the Department of Commerce and Labor," the jurisdiction, supervision and control possessed and exercised by the Department of the Treasury over the immigration of aliens into the United States were transferred to

the Department of Commerce and Labor established by the act, to take effect and be in force the first day of July, 1903.

Mr. Chief Justice FULLER delivered the opinion of the Court:

This appeal was taken directly to this court on the ground that the case involved the construction or application of the Constitution of the United States, and that the constitutionality of a law of the United States was drawn in question; and although it may be, as argued by the Government, that the principles which must control our decision have been practically settled, we think, the whole record considered, that we are not constrained to dismiss the appeal for that reason.

It is contended that the act of March 3, 1903, is unconstitutional because in contravention of the First, Fifth and Sixth Articles of Amendment of the Constitution, and of section 1 of Article 3 of that instrument; and because no power "is delegated by the Constitution to the General Government over alien friends with reference to their admission into the United States or otherwise, or over the beliefs of citizens, denizens, sojourners or aliens, or over the freedom of speech or of the press."

Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers; that the deportation of an alien who is found to be here in violation of law is not a deprivation of liberty without due process of law, and that the provisions of the Constitution securing the right of trial by jury have no application. *Chae Chan Ping* v. *United States*, 130 U. S. 581; *Nishimura Ekiu* v. *United States*, 142 U. S. 651; *Fong Yue Ting* v. *United States*, 149 U. S. 698; *Lem Moon Sing* v. *United States*, 158 U. S. 538; *Wong Wing* v. *United States*, 163 U. S. 228; *Fok Yung Yo* v. *United States*, 185 U. S. 296; *Japanese Immigrant Case*, 189 U. S. 86; *Chin Bak Kan* v. *United States*, 186 U. S. 193; *United States* v. *Sing Tuck*, 194 U. S. ——.

In the case last cited the distinction on which *Gonzales* v. *Williams*, 192 U. S. 1, turned was pointed out. The question whether a citizen of Porto Rico, under the treaty of cession and the act of April 12, 1900, came within the immigration law of March 3, 1891, was purely a question of law, which being decided in the negative all questions of fact became immaterial.

In the present case alienage was conceded and was not in dispute, and it was the question of fact thereupon arising that was passed on by the Board, and by the Secretary on appeal.

Whether rested on the accepted principle of international law that every sovereign nation has the power, as inherent in sovereignty and essen-

tial to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe; or on the power to regulate commerce with foreign nations, which includes the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States, the act before us is not open to constitutional objection. And while we held in *Wong Wing* v. *United States, supra,* a certain provision of an immigration law invalid on that ground, this act does not come within the ruling.

In that case Mr. Justice Shiras, speaking for the court, said:

"We regard it as settled by our previous decisions that the United States can, as a matter of public policy, by Congressional enactment, forbid aliens or classes of aliens from coming within their borders, and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the power and duty of identifying and arresting the persons included in such decree, and causing their deportation, upon executive or subordinate officials.

"But when Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous punishment at hard labor, or by confiscating their property, we think such legislation, to be valid, must provide for a judicial trial to establish the guilt of the accused. No limits can be put by the courts upon the power of Congress to protect, by summary methods, the country from the advent of aliens whose race or habits render them undesirable as citizens, or to expel such if they have already found their way into our land and unlawfully remain therein. But to declare unlawful residence within the country to be an infamous crime, punishable by deprivation of liberty and property, would be to pass out of the sphere of constitutional legislation, unless provision were made that the fact of guilt should first be established by a judicial trial. It is not consistent with the theory of our government that the legislature should, after having defined an offence as an infamous crime, find the fact of guilt and adjudge the punishment by one of its own agents."

Detention or temporary confinement as part of the means necessary to give effect to the exclusion or expulsion was held valid, but so much of the act of 1892 as provided for imprisonment at hard labor without a judicial trial was held to be unconstitutional. The cases of *Chae Chang Ping, Fong Yue Ting* and *Lem Moon Sing* were carefully considered and applied.

We do not feel called upon to reconsider these decisions, and they dispose of the specific contentions as to the application of the Fifth and Sixth Amendments, and section 1 of Article III, and the denial of the delegation to the General Government of the power to enact this law. But it is said that the act violates the First Amendment, which prohibits the passage of any law "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

We are at a loss to understand in what way the act is obnoxious to this objection. It has no reference to an establishment of religion nor does it prohibit the free exercise thereof; nor abridge the freedom of speech or of the press; nor the right of the people to assemble and petition the government for a redress of grievances. It is, of course, true that if an alien is not permitted to enter this country, or, having entered contrary to law, is expelled, he is in fact cut off from worshipping or speaking or publishing or petitioning in the country, but that is merely because of his exclusion therefrom. He does not become one of the people to whom these things are secured by our Constitution by an attempt to enter forbidden by law. To appeal to the Constitution is to concede that this is a land governed by that supreme law, and as under it the power to exclude has been determined to exist, those who are excluded cannot assert the rights in general obtaining in a land to which they do not belong as citizens or otherwise.

Appellant's contention really comes to this, that the act is unconstitutional so far as it provides for the exclusion of an alien because he is an anarchist.

The argument seems to be that, conceding that Congress has the power to shut out any alien, the power nevertheless does not extend to some aliens, and that if the act includes all alien anarchists, it is unconstitutional, because some anarchists are merely political philosophers, whose teachings are beneficial rather than otherwise.

Counsel give these definitions from the Century Dictionary:

"ANARCHY. Absence or insufficiency of government; a state of society in which there is no capable supreme power, and in which the several functions of the state are performed badly or not at all; social and political confusion. Specifically—2. A social theory which regards the union of order with the absence of all direct government of man by man as the political ideal; absolute individual liberty. 3. Confusion in general.

"ANARCHIST. 1. Properly, one who advocates anarchy or the absence of government as a political ideal; a believer in an anarchic theory of society; especially, an adherent of the social theory of Proudhon. (See Anarchy, 2.) 2. In popular use, one who seeks to overturn by violence all constituted forms and institutions of society and government, all law and order, and all rights of property, with no purpose of establishing any other system of order in the place of that destroyed; especially, such a person when actuated by mere lust of plunder. 3. Any person who promotes disorder or excites revolt against an established rule, law, or custom."

And Huxley is quoted as saying: "Anarchy, as a term of political philosophy, must be taken only in its proper sense, which has nothing to do with disorder or with crime, but denotes a state of society in which the rule of each individual by himself is the only government the legitimacy of which is recognized."

The language of the act is "anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United

States or of all government or of all forms of law, or the assassination of public officials." If this should be construed as defining the word "anarchists" by the words which follow, or as used in the popular sense above given, it would seem that when an alien arrives in this country, who avows himself to be an anarchist, without more, he accepts the definition. And we suppose counsel does not deny that this Government has the power to exclude an alien who believes in or advocates the overthrow of the Government or of all governments by force or the assassination of officials. To put that question is to answer it.

And if the judgment of the board and the Secretary was that Turner came within the act as thus construed, we cannot hold as matter of law that there was no evidence on which that conclusion could be rested. Even if Turner, though he did not so state to the board, only regarded the absence of government as a political ideal, yet when he sought to attain it by advocating, not simply for the benefit of workingmen, who are justly entitled to repel the charge of desiring the destruction of law and order, but "at any rate, as an anarchist," the universal strike to which he referred, and by discourses on what he called "The legal murder of 1887," (*Spies* v. *People*, 122 Ill. 1,) and by addressing mass meetings on that subject in association with Most, (*Reg.* v. *Most*, 7 Q. B. Div. 244; *People* v. *Most*, 171 N. Y. 423,) we cannot say that the inference was unjustifiable either that he contemplated the ultimate realization of his ideal by the use of force, or that his speeches were incitements to that end.

If the word "anarchists" should be interpreted as including aliens whose anarchistic views are professed as those of political philosophers innocent of evil intent, it would follow that Congress was of opinion that the tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population, whether permanently or temporarily, whether many or few, and, in the light of previous decisions, the act, even in this aspect, would not be unconstitutional, or as applicable to any alien who is opposed to all organized government.

We are not to be understood as depreciating the vital importance of freedom of speech and of the press, or as suggesting limitations on the spirit of liberty, in itself unconquerable, but this case does not involve those considerations. The flaming brand which guards the realm where no human government is needed still bars the entrance; and as long as human governments endure they cannot be denied the power of self-preservation, as that question is presented here.

Reference was made by counsel to the alien law of June 25, 1798, (1 Stat. 570, c. 58,) but we do not think that the controversy over that law (and the sedition law) and the opinions expressed at the time against its

constitutionality have any bearing upon this case, which involves an act couched in entirely different terms and embracing an entirely different purpose. As Mr. Justice Field remarked in the *Chinese Exclusion Case*, 130 U. S. 610: "The act was passed during a period of great political excitement, and it was attacked and defended with great zeal and ability. It is enough, however, to say that it is entirely different from the act before us, and the validity of its provisions was never brought to the test of judicial decision in the courts of the United States."

Order affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 561.—October Term, 1903.

The United States ex rel. John Turner, Appellant, *vs.* William Williams, United States Commissioner of Immigration for the Port of New York.	Appeal from the Circuit Court of the United States for the Southern District of New York.

[May 16, 1904.]

Separate opinion by Brewer, J.

In view of the range of discussion in the argument of this case at the bar I feel justified in adding a few words to what has been said by the Chief Justice.

First. I fully endorse and accentuate the conclusions of the court, as disclosed by the opinion, that, notwithstanding the legislation of Congress, the courts may and must, when properly called upon by petition in *habeas corpus*, examine and determine the right of any individual restrained of his personal liberty to be discharged from such restraint. I do not believe it within the power of Congress to give to ministerial officers a final adjudication of the right to liberty or to oust the courts from the duty of inquiry respecting both law and facts. "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." (Const. Art. 1, sec. 9, clause 2.)

Second. While undoubtedly the United States as a nation has all the powers which inhere in any nation, Congress is not authorized in all things to act for the nation, and too little effect has been given to the Tenth Article of the amendments to the Constitution, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The powers the people have given to the General Government are named in the Constitution, and all not there named, either expressly or by implication, are reserved to the people and can be exercised only by them, or upon further grant from them.

Third. No testimony was offered on the hearing before the Circuit Court other than that taken before the immigration board of inquiry, and none before such board save that preserved in its report. Hence the facts must be determined by that evidence. It is not an unreasonable de-

duction therefrom that petitioner is an anarchist in the commonly accepted sense of the term, one who urges and seeks the overthrow by force of all government. If that be not the fact, he should have introduced testimony to establish the contrary. It is unnecessary, therefore, to consider what rights he would have if he were only what is called by way of differentiation a philosophical anarchist, one who simply entertains and expresses the opinion that all government is a mistake, and that society would be better off without any.